

AMENDED IN SENATE MAY 9, 2006
AMENDED IN SENATE APRIL 20, 2006
AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1759

Introduced by Senator Ashburn

February 24, 2006

An act to amend Sections 1265.5, ~~1337.2, 1337.6~~, 1338.5, 1416.26, 1522, 1568.09, 1569.17, 1575.7, 1596.871, 1728.1, ~~1736.1, 1736.2~~, 1736.6, 1743.9, and 1797.191 of, and to add Chapter 2.6 (commencing with Section 1499) to Division 2 of, the Health and Safety Code, and to amend Section 5405 of the Welfare and Institutions Code, relating to health and care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1759, as amended, Ashburn. Health and care facilities: background checks.

Under existing law, the State Department of Health Services licenses and regulates health facilities, including intermediate care facilities. A violation of these provisions is a crime.

Existing law requires the department to secure a criminal record from an appropriate law enforcement agency prior to the initial licensure or renewal of a license of any person or persons to operate or manage an intermediate care facility/developmentally disabled-habilitative, intermediate care facility/developmentally disabled nursing, or intermediate care facility/developmentally disabled, other than an intermediate care facility/developmentally disabled operated by the state, to determine whether the applicant, facility administrator or manager, any direct care staff, or any other

adult living in the same location has ever been convicted of a crime other than a minor traffic violation.

This bill would, instead, require the criminal record clearance be conducted by the submission of fingerprint images to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal record clearance, and would prohibit direct contact by the applicant with residents until completion of the clearance. *By imposing additional licensure requirements on these facilities the bill would change the definition of an existing crime, thus creating a state-mandated local program.*

~~This bill would also prohibit the applicant from applying for a criminal record clearance if the person subject to the criminal record clearance has been disqualified for engaging in the activity for which clearance is required until 2 years after notification of denial of the criminal record clearance.~~

~~Existing law establishes requirements, administered by the State Department of Health Services, for certification as a certified nurse assistant.~~

~~This bill would, in addition, require that a certified nurse assistant applicant not have had an application for certification denied or a certificate revoked, as specified in the preceding 2 years or have had a criminal record clearance denied in the preceding 2 years.~~

Existing law requires that a criminal record clearance shall be conducted for all nurse assistants by the submission of fingerprint cards to the department for processing at the Department of Justice, and requires completion of the record clearance prior to issuance or renewal of a certificate.

This bill would, instead, require the criminal record clearance be conducted by the submission of fingerprint images to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal record clearance, and would prohibit direct contact by the applicant with residents until completion of the clearance.

This bill would impose an additional requirement for licensing or certification under specified health care provider licensing programs administered by the State Department of Health Services by requiring that any person or entity licensed under one of the applicable programs disclose, ~~under penalty of perjury~~, any revocation or other disciplinary action taken or proposed *final administrative action taken*

against a license, certificate, registration, or other permission to engage in a profession, vocation, or occupation to operate a facility or institution. ~~By requiring the disclosure of that information under penalty of perjury, this bill would create a crime, and would result in a state-mandated local program.~~

Existing law establishes requirements, administered by the State Department of Health Services, for applicants for a nursing home facility administrator license, including the requirement that the applicant shall, as part of the application process, submit to the department 2 sets of completed fingerprint cards for a criminal record clearance through the Department of Justice.

This bill would, instead, require the applicant to submit electronic fingerprint images to the Department of Justice for a criminal clearance, would prohibit the applicant from direct contact with patients until completion of the clearance, ~~and would prohibit application for a criminal record clearance if the person subject to the criminal record clearance has been disqualified from engaging in the activity for which clearance is required until 2 years after notification of denial of the criminal record clearance.~~

Existing law, the California Adult Day Health Care Act, requires that the State Department of Health Services, prior to issuing a new license under that act, conduct certain procedures in securing a criminal record clearance with respect to the administrator, program director, and fiscal officer of a proposed adult day health care center. Any violation of the provisions of that act are a crime.

This bill would revise those procedures by, among other things, prohibiting a person from direct contact with residents until completion of the criminal record clearance. By revising those procedures this bill would revise the definition of a crime, this resulting in a state-mandated local program.

Existing law, administered by the State Department of Health Services, regulates licensing of home health agencies and private duty nursing agencies and certification of certified home health aides. Existing law requires certain persons, as part of the home health agency licensure process, as well as applicants for home health aid certification, to submit to the department fingerprints for the furnishing of the person's criminal record clearance.

This bill would revise the fingerprint requirements to use the submission of electronic fingerprint records to the Department of

~~Justice, and would prohibit licensing or certification of those applicants within 2 years of specified circumstances.~~

Under existing law, the State Department of Social Services licenses and regulates various community care facilities, residential care facilities for the elderly and for persons with a chronic, life-threatening illness, and child day care facilities. Existing law requires the department to inspect certain of these facilities within 90 days of initial licensure, to evaluate compliance with applicable rules and regulations, and to assess the facility's continuing ability to meet regulatory requirements.

Under existing law, licensees and other individuals who are present and provide care in these facilities are required to provide fingerprints and the department is required to secure the individual's criminal history, to determine whether he or she has been convicted of a crime other than a minor traffic violation, or convicted of specified sex-related offenses. Under existing law, violation of the provisions governing these facilities is a misdemeanor.

This bill would require an individual to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services before his or her initial presence in any one of the above categories of facilities. ~~The bill would require an applicant for facility licensure, or other specified individuals, to sign a declaration under penalty of perjury, disclosing any prior criminal convictions or arrests, or any prior disciplinary action taken against him or her by a governmental agency.~~

By changing the definition of an existing crime, ~~and by expanding the crime of perjury,~~ this bill would impose a state-mandated local program.

~~Under existing law, the department is required to comply with specified requirements before prohibiting a person from being employed or having contact with clients in any of the facilities described above, on the basis of a denied criminal record exemption request or arrest information.~~

This bill, notwithstanding existing law, would prohibit an individual whose request for an exemption has been denied, or whose exemption has been revoked, from seeking reinstatement or an exemption for 2 years. ~~The bill would permanently exclude the individual if that individual's request for exemption was denied based on conviction for a crime for which no exemption may be granted.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1.~~

2 ~~SECTION 1.~~ Section 1265.5 of the Health and Safety Code is
3 amended to read:

4 1265.5. (a) (1) Prior to the initial licensure or renewal of a
5 license of any person or persons to operate or manage an
6 intermediate care facility/developmentally disabled habilitative,
7 an intermediate care facility/developmentally disabled nursing, or
8 an intermediate care facility/developmentally disabled, other than
9 an intermediate care facility/developmentally disabled operated
10 by the state that secures criminal record clearances for its
11 employees through a method other than as specified in this
12 section or upon the hiring of direct care staff by any of these
13 facilities, the department shall secure from the Department of
14 Justice a criminal record to determine whether the applicant,
15 facility administrator or manager, any direct care staff, or any
16 other adult living in the same location, has ever been convicted
17 of a crime other than a minor traffic violation.

18 (2) The criminal record clearance shall require the applicant to
19 submit electronic fingerprint images of the facility administrator
20 or manager, and any direct care staff, or any other adult living in
21 the same location, to the Department of Justice. Applicants shall
22 be responsible for any cost associated with transmitting the
23 fingerprint images.

24 (3) The criminal record clearance shall be completed prior to
25 direct staff contact with residents of the facility administrator or
26 manager, and any direct care staff, or any other adult living in the
27 same location. A criminal record clearance shall be complete
28 when the department has obtained the person's criminal record
29 information from the Department of Justice and has determined

1 that the person is not disqualified from engaging in the activity
2 for which clearance is required.

3 (b) (1) The application for licensure or renewal shall be
4 denied if the criminal record indicates that the person seeking
5 initial licensure or renewal of a license referred to in subdivision
6 (a) has been convicted of a violation or attempted violation of
7 any one or more of the following Penal Code provisions: Section
8 187, subdivision (a) of Section 192, Section 203, 205, 206, 207,
9 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1,
10 Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,
11 subdivisions (c), (d), (f), and (g) of Section 286, Section 288,
12 subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5,
13 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d
14 to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666,
15 unless any of the following applies:

16 (A) The person was convicted of a felony and has obtained a
17 certificate of rehabilitation under Chapter 3.5 (commencing with
18 Section 4852.01) of Title 6 of Part 3 of the Penal Code and the
19 information or accusation against the person has been dismissed
20 pursuant to Section 1203.4 of the Penal Code with regard to that
21 felony.

22 (B) The person was convicted of a misdemeanor and the
23 information or accusation against the person has been dismissed
24 pursuant to Section 1203.4 or 1203.4a of the Penal Code.

25 (C) The person was convicted of a felony or a misdemeanor,
26 but has previously disclosed the fact of each conviction to the
27 department and the department has made a determination in
28 accordance with law that the conviction does not disqualify the
29 person.

30 (2) The application for licensure or renewal shall be denied if
31 the criminal record of the person includes a conviction in another
32 state for an offense that, if committed or attempted in this state,
33 would have been punishable as one or more of the offenses set
34 forth in paragraph (1), unless evidence of rehabilitation
35 comparable to the dismissal of a misdemeanor or a certificate of
36 rehabilitation as set forth in subparagraph (A) or (B) of paragraph
37 (1) is provided to the department.

38 (c) If the criminal record of a person described in subdivision
39 (a) indicates any conviction other than a minor traffic violation or
40 other than a conviction listed in subdivision (b), the department

1 may deny the application for licensure or renewal. In determining
2 whether or not to deny the application for licensure or renewal
3 pursuant to this subdivision, the department shall take into
4 consideration the following factors as evidence of good character
5 and rehabilitation:

6 (1) The nature and seriousness of the offense under
7 consideration and its relationship to their employment duties and
8 responsibilities.

9 (2) Activities since conviction, including employment or
10 participation in therapy or education, that would indicate changed
11 behavior.

12 (3) The time that has elapsed since the commission of the
13 conduct or offense referred to in paragraph (1) or (2) and the
14 number of offenses.

15 (4) The extent to which the person has complied with any
16 terms of parole, probation, restitution, or any other sanction
17 lawfully imposed against the person.

18 (5) Any rehabilitation evidence, including character
19 references, submitted by the person.

20 (6) Employment history and current employer
21 recommendations.

22 (7) Circumstances surrounding the commission of the offense
23 that would demonstrate the unlikelihood of repetition.

24 (8) The granting by the Governor of a full and unconditional
25 pardon.

26 (9) A certificate of rehabilitation from a superior court.

27 ~~(d) Any person who is subject to a criminal clearance under~~
28 ~~this section who has been disqualified from engaging in the~~
29 ~~activity for which clearance is required shall not reapply for a~~
30 ~~criminal clearance for a period of two years after notification of~~
31 ~~denial of the criminal clearance.~~

32 ~~(e) Any person whose license was denied or revoked pursuant~~
33 ~~to Section 1265.1 or 1294 shall not reapply for a license for a~~
34 ~~period of two years after notification of denial or revocation of~~
35 ~~the license.~~

36 ~~(f)~~

37 (d) Nothing in this section shall be construed to require a
38 criminal record check of a person receiving services in an
39 intermediate care facility/developmentally disabled habilitative,

1 intermediate care facility/developmentally disabled-nursing, or
2 intermediate care facility/developmentally disabled.

3 ~~(g)~~

4 (e) For purposes of this section, “direct care staff” means all
5 facility staff who are trained and experienced in the care of
6 persons with developmental disabilities and who directly provide
7 program and nursing services to clients. Administrative and
8 licensed personnel shall be considered direct care staff when
9 directly providing program and nursing services to clients.
10 Persons employed as consultants and acting as direct care staff
11 shall be subject to the same requirements for a criminal record
12 clearance as other direct care staff. However, the employing
13 facility shall not be required to pay any costs associated with that
14 criminal record clearance.

15 ~~(h)~~

16 (f) Upon the employment of any person specified in
17 subdivision (a), and prior to any contact with clients or residents,
18 the facility shall ensure that electronic fingerprint images are
19 submitted to the Department of Justice for the purpose of
20 obtaining a criminal record check.

21 ~~(i)~~

22 (g) The department shall develop procedures to ensure that
23 any licensee, direct care staff, or certificate holder for whom a
24 criminal record has been obtained pursuant to this section or
25 Section 1338.5 or 1736 shall not be required to obtain multiple
26 criminal record clearances.

27 ~~SEC. 2. Section 1337.2 of the Health and Safety Code is~~
28 ~~amended to read:~~

29 ~~1337.2. (a) An applicant for certification as a certified nurse~~
30 ~~assistant shall comply with each of the following:~~

31 ~~(1) Be at least 16 years of age.~~

32 ~~(2) Have successfully completed a training program approved~~
33 ~~by the department, which includes an examination to test the~~
34 ~~applicant’s knowledge and skills related to basic patient care~~
35 ~~services.~~

36 ~~(3) Obtain a criminal record clearance pursuant to Section~~
37 ~~1338.5.~~

38 ~~(4) Shall not have had an application for certification denied or~~
39 ~~a certificate revoked pursuant to Section 1337.9 or 1736.5 in the~~
40 ~~preceding two years.~~

1 ~~(5) Shall not have a criminal record clearance denied by the~~
2 ~~department in the preceding two years.~~

3 ~~(b) The state department may establish procedures for issuing~~
4 ~~certificates which recognize certification programs in other states~~
5 ~~and countries.~~

6 ~~(c) Upon written application, criminal record clearance~~
7 ~~pursuant to Section 1338.5, and documentation of passing an~~
8 ~~appropriate competency examination, the state department may~~
9 ~~issue a certificate to any applicant who possesses a valid state~~
10 ~~license as either a licensed vocational nurse or a registered nurse~~
11 ~~issued by any other state or foreign country, and who, in the~~
12 ~~opinion of the state department, has the qualifications specified~~
13 ~~in this article.~~

14 ~~(d) Upon written application, criminal record clearance~~
15 ~~pursuant to Section 1338.5, and documentation of passing an~~
16 ~~appropriate examination, the state department may issue a~~
17 ~~certificate to any applicant who has completed the fundamentals~~
18 ~~of nursing courses in a school for registered nurses, approved by~~
19 ~~the Board of Registered Nursing, or in a school for licensed~~
20 ~~vocational nurses, approved by the Board of Vocational Nurse~~
21 ~~and Psychiatric Technician Examiners, which are substantially~~
22 ~~equivalent to the certification training program specified in this~~
23 ~~article.~~

24 ~~(e) Every person certified as a nurse assistant under this article~~
25 ~~may be known as a “certified nurse assistant” and may place the~~
26 ~~letters CNA after his or her name when working in a licensed~~
27 ~~health facility. An individual working independently, providing~~
28 ~~personal care services, may not advertise or represent himself or~~
29 ~~herself as a certified nurse assistant.~~

30 ~~(f) Any person holding a nurse assistant certificate issued by~~
31 ~~the state department prior to January 1, 1988, may continue to~~
32 ~~hold himself or herself out as a certified nurse assistant until~~
33 ~~January 1, 1991. Thereafter, it shall be unlawful for any person~~
34 ~~not certified under this article to hold himself or herself out to be~~
35 ~~a certified nurse assistant. Any person willfully making any false~~
36 ~~representation as being a certified nurse assistant is guilty of a~~
37 ~~misdemeanor.~~

38 ~~(g) Any person who violates this article is guilty of a~~
39 ~~misdemeanor and, upon a conviction thereof, shall be punished~~
40 ~~by imprisonment in the county jail for not more than 180 days, or~~

1 by a fine of not less than twenty dollars (\$20) nor more than one
2 thousand dollars (\$1,000), or by both such fine and
3 imprisonment.

4 (h) If the department determines that a person had previously
5 applied for a certificate under this article, and the application was
6 denied pursuant to Section 1337.9 or 1736.5 within the last two
7 years, the department shall reject the application and exclude the
8 person from any facility licensed by the department as follows:

9 (1) In cases where the applicant petitioned for a hearing, the
10 department shall reject the application until two years have
11 elapsed from the effective date of the decision and order of the
12 department upholding the denial.

13 (2) In cases where the applicant did not petition for a hearing,
14 the department shall reject the application until two years have
15 elapsed from the date of the notification of the denial.

16 (3) In cases where an immediate action was taken pursuant to
17 subdivision (i) of Section 1337.9 or subdivision (h) of Section
18 1736.5 and the applicant petitioned for a hearing, the department
19 shall reject the application until two years have elapsed from the
20 date of the notification of the revocation.

21 SEC. 3. Section 1337.6 of the Health and Safety Code is
22 amended to read:

23 1337.6. (a) Certificates issued under this article shall be
24 renewed every two years and renewal shall be conditional upon
25 the occurrence of all of the following:

26 (1) The certificate holder submitting documentation of
27 completion of 48 hours of in-service training every two years
28 obtained through an approved training program or taught by a
29 director of staff development for a licensed skilled nursing or
30 intermediate care facility that has been approved by the state
31 department, or by individuals or programs approved by the state
32 department. At least 12 of the 48 hours of in-service training
33 shall be completed in each of the two years. Twenty-four of the
34 48 hours of in-service training may be obtained through an online
35 computer training program approved by the Licensing and
36 Certification Division of the state department.

37 (2) (A) A vendor of online programs for continuing education
38 shall ensure that each online course contains all of the following:

1 ~~(i) An interactive portion where the participants receive~~
2 ~~feedback, through online communication, based on input from~~
3 ~~the participant.~~

4 ~~(ii) Required use of a personal identification number or~~
5 ~~personal identification information to confirm the identity of the~~
6 ~~participant.~~

7 ~~(iii) A final screen displaying a printable statement, to be~~
8 ~~signed by the participant, certifying that the identified participant~~
9 ~~completed the course. The vendor shall obtain a copy of the final~~
10 ~~screen statement with the original signature of the participant~~
11 ~~prior to the issuance of a certificate of completion. The signed~~
12 ~~statement of completion shall be maintained by the vendor for a~~
13 ~~period of three years and shall be made available to the~~
14 ~~department upon demand.~~

15 ~~(B) The department may approve online programs for~~
16 ~~continuing education that do not meet the requirements of~~
17 ~~subparagraph (A) if the vendor demonstrates to the department's~~
18 ~~satisfaction that, through advanced technology, the course and~~
19 ~~the course delivery meet the other requirements of this section.~~

20 ~~(3) The certificate holder obtaining a criminal record~~
21 ~~clearance.~~

22 ~~(b) Certificates issued under this article shall expire on the~~
23 ~~certificate holder's birthday. If the certificate is renewed more~~
24 ~~than 30 days after its expiration, the certificate holder, as a~~
25 ~~condition precedent to renewal, shall also pay the delinquency~~
26 ~~fee prescribed by this article.~~

27 ~~(c) To renew an unexpired certificate, the certificate holder~~
28 ~~shall, on or before the certificate expiration date, apply for~~
29 ~~renewal on a form provided by the state department, pay the~~
30 ~~renewal fee prescribed by this article, and submit documentation~~
31 ~~of the required in-service training.~~

32 ~~(d) The state department shall give written notice to a~~
33 ~~certificate holder 90 days in advance of the renewal date and, 90~~
34 ~~days in advance of the expiration of the fourth year that a~~
35 ~~renewal fee has not been paid, and shall give written notice~~
36 ~~informing the certificate holder, in general terms, of the~~
37 ~~provisions of this article. Nonreceipt of the renewal notice does~~
38 ~~not relieve the certificate holder of the obligation to make a~~
39 ~~timely renewal. Failure to make a timely renewal shall result in~~
40 ~~expiration of the certificate.~~

~~(e) Except as otherwise provided in this article, an expired certificate may be renewed at any time within two years after its expiration on the filing of an application for renewal on a form prescribed by the state department, and payment of the renewal fee in effect on the date the application is filed, and documentation of the required in-service education.~~

~~Renewal under this article shall be effective on the date on which the application is filed, on the date when the renewal fee is paid, or on the date on which the delinquency fee is paid, whichever occurs last. If so renewed, the certificate shall continue in effect until the date provided for in this article, when it shall expire if it is not again renewed.~~

~~(f) If a certified nurse assistant applies for renewal more than two years after the expiration, the certified nurse assistant shall complete an approved 75-hour competency evaluation training program and competency evaluation program. If the certified nurse assistant demonstrates in writing to the state department's satisfaction why the certified nurse assistant cannot pay the delinquency fee, then the state department on a case-by-case basis shall consider waiving the delinquency fee. A suspended certificate is subject to expiration and shall be renewed as provided in this article, but this renewal does not entitle the certificate holder, while the certificate remains suspended, and, until it is reinstated, to engage in the certified activity, or in any other activity or conduct in violation of the order or judgment by which the certificate was suspended.~~

~~(g) A revoked certificate is subject to expiration as provided in this article, but it cannot be renewed. If reinstatement of the certificate is approved by the state department, the certificate holder, as a condition precedent to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the date the application for reinstatement is filed, plus the delinquency fee, if any, accrued at the time of its revocation. If the prior certificate was revoked within the preceding two years, the prior certificate holder may not file an application until two years have elapsed since the date of the revocation pursuant to subdivision (h) of Section 1337.2.~~

~~(h) Except as provided in subdivision (i), a certificate that is not renewed within four years after its expiration cannot be renewed, restored, reissued, or reinstated except upon completion~~

1 of a certification program unless deemed otherwise by the state
2 department if all of the following conditions are met:

3 (1) No fact, circumstance, or condition exists that, if the
4 certificate was issued, would justify its revocation or suspension.

5 (2) The person pays the application fee provided for by this
6 article.

7 (3) The person takes and passes any examination that may be
8 required of an applicant for a new certificate at that time, that
9 shall be given by an approved provider of a certification training
10 program.

11 (i) A certified nurse assistant whose certificate has expired
12 after two years may have his or her certificate renewed if he or
13 she pays a training application fee, completes 75 hours in an
14 approved competency evaluation training program, passes a
15 competency test, and obtains a criminal background clearance
16 prior to the renewal. The department shall develop a training
17 program for these previously certified individuals.

18 (j) Certificate holders shall notify the department within 60
19 days of any change of address. Any notice sent by the department
20 shall be effective if mailed to the current address filed with the
21 department.

22 (k) Certificate holders that have been certified as both nurse
23 assistants pursuant to this article and home health aides pursuant
24 to Chapter 8 (commencing with Section 1725) of Division 2 shall
25 renew their certificates at the same time on one application.

26 **SEC. 4.**

27 *SEC. 2.* Section 1338.5 of the Health and Safety Code is
28 amended to read:

29 1338.5. (a) (1) A criminal record clearance shall be
30 conducted for all nurse assistants by the submission of fingerprint
31 images to the Department of Justice. This criminal record
32 clearance shall be completed prior to issuing or renewing a
33 certificate, and prior to direct contact with residents. A criminal
34 record shall be complete when the department has obtained the
35 applicant's criminal record information from the Department of
36 Justice, and has determined that the person is not disqualified
37 from engaging in the activity for which clearance is required.
38 Applicants shall be responsible for any costs associated with
39 transmitting the fingerprint images. The fee to cover the
40 processing costs of the Department of Justice, not including the

1 costs associated with rolling the fingerprint cards, shall not
2 exceed thirty-two dollars (\$32) per submission.

3 (2) (A) Upon enrollment in a training program for nurse
4 assistant certification, and prior to direct contact with residents, a
5 candidate for training shall submit a training and examination
6 application to the department and submit electronic fingerprint
7 images to receive a criminal record review through the
8 Department of Justice. Submission of the fingerprints to the
9 Federal Bureau of Investigation shall be at the discretion of the
10 department. The criminal record shall be completed prior to
11 direct contact with residents by the nurse assistant applicant.

12 (B) New nurse assistant applicants who are unemployed and
13 unable to pay the fee charged by the Department of Justice
14 pursuant to paragraph (1) of subdivision (a) due to financial
15 hardship may request a waiver for a period not to exceed six
16 months. The request for waiver shall be made in writing at the
17 time the fingerprint card is submitted for processing. The
18 applicant shall agree to pay the fee within six months of
19 employment. The failure to pay the fee within the six-month
20 period shall result in the inactivation of the applicant's certificate
21 until the fee is paid in full.

22 (b) Upon receipt of the fingerprints, the Department of Justice
23 shall notify the state department of the criminal record
24 information, as provided for in this subdivision. If no criminal
25 record information has been recorded, the Department of Justice
26 shall provide the state department with a statement of that fact. If
27 the fingerprints are illegible, the Department of Justice shall,
28 within 15 calendar days from receipt of the fingerprints, notify
29 the state department of that fact.

30 (c) The department shall respond to the applicant and
31 employer within 30 days from the date of receipt of the
32 fingerprint cards.

33 (d) The use of fingerprint live-scan technology implemented
34 by the Department of Justice by the year 1999 shall be used by
35 the Department of Justice to generate timely and accurate
36 positive fingerprint identification prior to nurse assistant
37 certification and prior to direct contact with residents by the
38 nurse assistant applicant.

39 (e) The state department shall develop procedures to ensure
40 that any licensee, direct care staff, or certificate holder for whom

1 a criminal record has been obtained pursuant to this section or
2 Section 1265.5 or 1736 shall not be required to obtain multiple
3 criminal record clearances.

4 ~~SEC. 5.~~

5 *SEC. 3.* Section 1416.26 of the Health and Safety Code is
6 amended to read:

7 1416.26. (a) As part of the application process for a nursing
8 home administrator license, an applicant shall submit electronic
9 fingerprint images, for a criminal record clearance, to the
10 Department of Justice and the Federal Bureau of Investigation.
11 The applicant shall provide proof of electronic transmission of
12 fingerprints to the Department of Justice and the Federal Bureau
13 of Investigation. Upon receipt of the fingerprints, the Department
14 of Justice and the Federal Bureau of Investigation shall notify the
15 department of the criminal record information. If no criminal
16 record information has been recorded, the Department of Justice
17 and the Federal Bureau of Investigation shall provide the
18 department with a statement of that fact.

19 (b) This criminal record clearance shall be completed prior to
20 issuing a license. Applicants shall be responsible for any costs
21 associated with the criminal record clearance. The fee to cover
22 the processing costs of the Department of Justice, not including
23 the costs associated with transmitting the fingerprint images,
24 shall not exceed thirty-two dollars (\$32) per card for state
25 fingerprints, and shall not exceed twenty-four dollars (\$24) per
26 submission for federal fingerprints.

27 (c) A criminal record clearance shall be completed prior to
28 acceptance of an application by the Nursing Home Administrator
29 Program and prior to the applicant's direct contact with patients.

30 (d) A criminal record clearance shall be complete when the
31 department has obtained the person's criminal record information
32 from the Department of Justice and has determined that the
33 person is not disqualified from engaging in the activity for which
34 clearance is required.

35 ~~(e) A person subject to a criminal clearance under this section~~
36 ~~that has been disqualified from engaging in the activity for which~~
37 ~~clearance is required shall not reapply for licensure until two~~
38 ~~years after notification of denial of the criminal record clearance.~~

1 ~~SEC. 6.~~

2 ~~SEC. 4.~~ Chapter 2.6 (commencing with Section 1499) is
3 added to Division 2 of the Health and Safety Code, to read:

4
5 CHAPTER 2.6. USE OF ADMINISTRATIVE ACTION FOR
6 LICENSURE
7

8 1499. (a) Any person or entity licensed or certificated under
9 Chapter 1 (commencing with Section 1200), Chapter 2
10 (commencing with Section 1250), Chapter 2.3 (commencing with
11 Section 1400), Chapter 2.35 (commencing with Section 1416),
12 Chapter 3.3 (commencing with Section 1570), Chapter 8
13 (commencing with Section 1725), Chapter 8.3 (commencing with
14 Section 1743), Chapter 8.5 (commencing with Section 1745),
15 Chapter 8.6 (commencing with Section 1760), or Chapter 11
16 (commencing with Section 1794.01), or under Section 1247.6 of
17 the Business and Professions Code, shall, in addition to all other
18 requirements, disclose as part of the application, ~~under penalty of~~
19 ~~perjury~~, for the license or certificate any revocation or other
20 ~~disciplinary action taken or proposed final administrative action~~
21 ~~taken~~ against a license, certificate, registration, or other approval
22 to engage in a profession, vocation, or occupation, or a license or
23 other permission to operate a facility or institution.

24 (b) The department may consider, in determining whether to
25 grant or deny the license or certification, any final revocation or
26 ~~other disciplinary action taken or proposed final administrative~~
27 ~~action taken~~ against a license, certificate, registration, or other
28 permission to engage in a profession, vocation, or occupation or
29 a license or other permission to operate a facility or institution.

30 ~~SEC. 7.~~

31 ~~SEC. 5.~~ Section 1522 of the Health and Safety Code is
32 amended to read:

33 1522. The Legislature recognizes the need to generate timely
34 and accurate positive fingerprint identification of applicants as a
35 condition of issuing licenses, permits, or certificates of approval
36 for persons to operate or provide direct care services in a
37 community care facility, foster family home, or a certified family
38 home of a licensed foster family agency. Therefore, the
39 Legislature supports the use of the fingerprint live-scan
40 technology, as identified in the long-range plan of the

1 Department of Justice for fully automating the processing of
2 fingerprints and other data by the year 1999, otherwise known as
3 the California Crime Information Intelligence System (CAL-CII),
4 to be used for applicant fingerprints. It is the intent of the
5 Legislature in enacting this section to require the fingerprints of
6 those individuals whose contact with community care clients
7 may pose a risk to the clients' health and safety. An individual
8 shall be required to obtain either a criminal record clearance from
9 the Department of Justice or a criminal record exemption from
10 the State Department of Social Services before his or her initial
11 presence in a community care facility.

12 (a) (1) Before issuing a license or special permit to any person
13 or persons to operate or manage a community care facility, the
14 State Department of Social Services shall secure from an
15 appropriate law enforcement agency a criminal record to
16 determine whether the applicant or any other person specified in
17 subdivision (b) has ever been convicted of a crime other than a
18 minor traffic violation or arrested for any crime specified in
19 Section 290 of the Penal Code, for violating Section 245 or
20 273.5, of the Penal Code, subdivision (b) of Section 273a of the
21 Penal Code, or, prior to January 1, 1994, paragraph (2) of Section
22 273a of the Penal Code, or for any crime for which the
23 department cannot grant an exemption if the person was
24 convicted and the person has not been exonerated.

25 (2) The criminal history information shall include the full
26 criminal record, if any, of those persons, and subsequent arrest
27 information pursuant to Section 11105.2 of the Penal Code.

28 (3) Except during the 2003–04, 2004–05, and 2005–06 fiscal
29 years, neither the Department of Justice nor the State Department
30 of Social Services may charge a fee for the fingerprinting of an
31 applicant for a license or special permit to operate a facility
32 providing nonmedical board, room, and care for six or less
33 children or for obtaining a criminal record of the applicant
34 pursuant to this section.

35 (4) The following shall apply to the criminal record
36 information:

37 (A) If the State Department of Social Services finds that the
38 applicant, or any other person specified in subdivision (b), has
39 been convicted of a crime other than a minor traffic violation, the

1 application shall be denied, unless the director grants an
2 exemption pursuant to subdivision (g).

3 (B) If the State Department of Social Services finds that the
4 applicant, or any other person specified in subdivision (b) is
5 awaiting trial for a crime other than a minor traffic violation, the
6 State Department of Social Services may cease processing the
7 application until the conclusion of the trial.

8 (C) If no criminal record information has been recorded, the
9 Department of Justice shall provide the applicant and the State
10 Department of Social Services with a statement of that fact.

11 (D) If the State Department of Social Services finds after
12 licensure that the licensee, or any other person specified in
13 paragraph (2) of subdivision (b), has been convicted of a crime
14 other than a minor traffic violation, the license may be revoked,
15 unless the director grants an exemption pursuant to subdivision
16 (g).

17 (E) An applicant and any other person specified in subdivision
18 (b) shall submit a second set of fingerprints to the Department of
19 Justice for the purpose of searching the criminal records of the
20 Federal Bureau of Investigation, in addition to the criminal
21 records search required by this subdivision. If an applicant and
22 all other persons described in subdivision (b) meet all of the
23 conditions for licensure, except receipt of the Federal Bureau of
24 Investigation's criminal history information for the applicant or
25 any of the persons described in subdivision (b), the department
26 may issue a license if the applicant and each person described in
27 subdivision (b) has signed and submitted a statement that he or
28 she has never been convicted of a crime in the United States,
29 other than a traffic infraction, as defined in paragraph (1) of
30 subdivision (a) of Section 42001 of the Vehicle Code. If, after
31 licensure, the department determines that the licensee or any
32 other person specified in subdivision (b) has a criminal record,
33 the license may be revoked pursuant to Section 1550. The
34 department may also suspend the license pending an
35 administrative hearing pursuant to Section 1550.5.

36 ~~(F) An applicant and any other person specified in subdivision~~
37 ~~(b), as a part of the background clearance process, shall sign a~~
38 ~~declaration under penalty of perjury disclosing whether or not the~~
39 ~~person has any prior criminal convictions or arrests, or has had~~

1 ~~any prior disciplinary action taken against him or her by any~~
2 ~~federal, state, or local governmental agency.~~

3 (b) (1) In addition to the applicant, this section shall be
4 applicable to criminal convictions of the following persons:

5 (A) Adults responsible for administration or direct supervision
6 of staff.

7 (B) Any person, other than a client, residing in the facility.

8 (C) Any person who provides client assistance in dressing,
9 grooming, bathing, or personal hygiene. Any nurse assistant or
10 home health aide meeting the requirements of Section 1338.5 or
11 1736.6, respectively, who is not employed, retained, or
12 contracted by the licensee, and who has been certified or
13 recertified on or after July 1, 1998, shall be deemed to meet the
14 criminal record clearance requirements of this section. A certified
15 nurse assistant and certified home health aide who will be
16 providing client assistance and who falls under this exemption
17 shall provide one copy of his or her current certification, prior to
18 providing care, to the community care facility. The facility shall
19 maintain the copy of the certification on file as long as care is
20 being provided by the certified nurse assistant or certified home
21 health aide at the facility. Nothing in this paragraph restricts the
22 right of the department to exclude a certified nurse assistant or
23 certified home health aide from a licensed community care
24 facility pursuant to Section 1558.

25 (D) Any staff person, volunteer, or employee who has contact
26 with the clients.

27 (E) If the applicant is a firm, partnership, association, or
28 corporation, the chief executive officer or other person serving in
29 like capacity.

30 (F) Additional officers of the governing body of the applicant,
31 or other persons with a financial interest in the applicant, as
32 determined necessary by the department by regulation. The
33 criteria used in the development of these regulations shall be
34 based on the person's capability to exercise substantial influence
35 over the operation of the facility.

36 (2) The following persons are exempt from the requirements
37 applicable under paragraph (1):

38 (A) A medical professional as defined in department
39 regulations who holds a valid license or certification from the
40 person's governing California medical care regulatory entity and

1 who is not employed, retained, or contracted by the licensee if all
2 of the following apply:

3 (i) The criminal record of the person has been cleared as a
4 condition of licensure or certification by the person's governing
5 California medical care regulatory entity.

6 (ii) The person is providing time-limited specialized clinical
7 care or services.

8 (iii) The person is providing care or services within the
9 person's scope of practice.

10 (iv) The person is not a community care facility licensee or an
11 employee of the facility.

12 (B) A third-party repair person or similar retained contractor if
13 all of the following apply:

14 (i) The person is hired for a defined, time-limited job.

15 (ii) The person is not left alone with clients.

16 (iii) When clients are present in the room in which the
17 repairperson or contractor is working, a staff person who has a
18 criminal record clearance or exemption is also present.

19 (C) Employees of a licensed home health agency and other
20 members of licensed hospice interdisciplinary teams who have a
21 contract with a client or resident of the facility and are in the
22 facility at the request of that client or resident's legal
23 decisionmaker. The exemption does not apply to a person who is
24 a community care facility licensee or an employee of the facility.

25 (D) Clergy and other spiritual caregivers who are performing
26 services in common areas of the community care facility or who
27 are advising an individual client at the request of, or with the
28 permission of, the client or legal decisionmaker, are exempt from
29 fingerprint and criminal background check requirements imposed
30 by community care licensing. This exemption does not apply to a
31 person who is a community care licensee or employee of the
32 facility.

33 (E) Members of fraternal, service, or similar organizations
34 who conduct group activities for clients if all of the following
35 apply:

36 (i) Members are not left alone with clients.

37 (ii) Members do not transport clients off the facility premises.

38 (iii) The same organization does not conduct group activities
39 for clients more often than defined by the department's
40 regulations.

1 (3) In addition to the exemptions in paragraph (2), the
2 following persons in foster family homes, certified family homes,
3 and small family homes are exempt from the requirements
4 applicable under paragraph (1):

5 (A) Adult friends and family of the licensed or certified foster
6 parent, who come into the home to visit for a length of time no
7 longer than defined by the department in regulations, provided
8 that the adult friends and family of the licensee are not left alone
9 with the foster children. However, the licensee, acting as a
10 reasonable and prudent parent, as defined in paragraph (2) of
11 subdivision (a) of Section 362.04 of the Welfare and Institutions
12 Code, may allow his or her adult friends and family to provide
13 short-term care to the foster child and act as an appropriate
14 occasional short-term babysitter for the child.

15 (B) Parents of a foster child's friends when the foster child is
16 visiting the friend's home and the friend, licensed or certified
17 foster parent, or both are also present. However, the licensee,
18 acting as a reasonable and prudent parent, may allow the parent
19 of the foster child's friends to act as an appropriate short-term
20 babysitter for the child without the friend being present.

21 (C) Individuals who are engaged by any licensed or certified
22 foster parent to provide short-term care to the child for periods
23 not to exceed 24 hours. Caregivers shall use a reasonable and
24 prudent parent standard in selecting appropriate individuals to act
25 as appropriate occasional short-term babysitters.

26 (4) In addition to the exemptions specified in paragraph (2),
27 the following persons in adult day care and adult day support
28 centers are exempt from the requirements applicable under
29 paragraph (1):

30 (A) Unless contraindicated by the client's individualized
31 program plan (IPP) or needs and service plan, a spouse,
32 significant other, relative, or close friend of a client, or an
33 attendant or a facilitator for a client with a developmental
34 disability if the attendant or facilitator is not employed, retained,
35 or contracted by the licensee. This exemption applies only if the
36 person is visiting the client or providing direct care and
37 supervision to the client.

38 (B) A volunteer if all of the following applies:

39 (i) The volunteer is supervised by the licensee or a facility
40 employee with a criminal record clearance or exemption.

1 (ii) The volunteer is never left alone with clients.

2 (iii) The volunteer does not provide any client assistance with
3 dressing, grooming, bathing, or personal hygiene other than
4 washing of hands.

5 (5) (A) In addition to the exemptions specified in paragraph
6 (2), the following persons in adult residential and social
7 rehabilitation facilities, unless contraindicated by the client's
8 individualized program plan (IPP) or needs and services plan, are
9 exempt from the requirements applicable under paragraph (1): a
10 spouse, significant other, relative, or close friend of a client, or an
11 attendant or a facilitator for a client with a developmental
12 disability if the attendant or facilitator is not employed, retained,
13 or contracted by the licensee. This exemption applies only if the
14 person is visiting the client or providing direct care and
15 supervision to that client.

16 (B) Nothing in this subdivision shall prevent a licensee from
17 requiring a criminal record clearance of any individual exempt
18 from the requirements of this section, provided that the
19 individual has client contact.

20 (6) Any person similar to those described in this subdivision,
21 as defined by the department in regulations.

22 (c) (1) Subsequent to initial licensure, any person specified in
23 subdivision (b) and not exempted from fingerprinting shall, as a
24 condition to employment, residence, or presence in a community
25 care facility, be fingerprinted and sign a declaration under
26 penalty of perjury regarding any prior criminal convictions. The
27 licensee shall submit these fingerprints to the Department of
28 Justice, along with a second set of fingerprints for the purpose of
29 searching the records of the Federal Bureau of Investigation, or
30 to comply with paragraph (1) of subdivision (h), prior to the
31 person's employment, residence, or initial presence in the
32 community care facility. These fingerprints shall be on a card
33 provided by the State Department of Social Services or sent by
34 electronic transmission in a manner approved by the State
35 Department of Social Services and the Department of Justice for
36 the purpose of obtaining a permanent set of fingerprints, and
37 shall be submitted to the Department of Justice by the licensee. A
38 licensee's failure to submit fingerprints to the Department of
39 Justice or to comply with paragraph (1) of subdivision (h), as
40 required in this section, shall result in the citation of a deficiency

1 and the immediate assessment of civil penalties in the amount of
2 one hundred dollars (\$100) per violation, per day for a maximum
3 of five days, unless the violation is a second or subsequent
4 violation within a 12-month period in which case the civil
5 penalties shall be in the amount of one hundred dollars (\$100)
6 per violation for a maximum of 30 days, and shall be grounds for
7 disciplining the licensee pursuant to Section 1550. The
8 department may assess civil penalties for continued violations as
9 permitted by Section 1548. The fingerprints shall then be
10 submitted to the State Department of Social Services for
11 processing. Upon request of the licensee, who shall enclose a
12 self-addressed stamped postcard for this purpose, the Department
13 of Justice shall verify receipt of the fingerprints.

14 (2) Within 14 calendar days of the receipt of the fingerprints,
15 the Department of Justice shall notify the State Department of
16 Social Services of the criminal record information, as provided
17 for in subdivision (a). If no criminal record information has been
18 recorded, the Department of Justice shall provide the licensee
19 and the State Department of Social Services with a statement of
20 that fact within 14 calendar days of receipt of the fingerprints.
21 Documentation of the individual's clearance or exemption shall
22 be maintained by the licensee and be available for inspection. If
23 new fingerprints are required for processing, the Department of
24 Justice shall, within 14 calendar days from the date of receipt of
25 the fingerprints, notify the licensee that the fingerprints were
26 illegible. When live-scan technology is operational, as defined in
27 Section 1522.04, the Department of Justice shall notify the State
28 Department of Social Services, as required by that section, and
29 shall also notify the licensee by mail, within 14 days of electronic
30 transmission of the fingerprints to the Department of Justice, if
31 the person has no criminal history recorded. A violation of the
32 regulations adopted pursuant to Section 1522.04 shall result in
33 the citation of a deficiency and an immediate assessment of civil
34 penalties in the amount of one hundred dollars (\$100) per
35 violation, per day for a maximum of five days, unless the
36 violation is a second or subsequent violation within a 12-month
37 period in which case the civil penalties shall be in the amount of
38 one hundred dollars (\$100) per violation for a maximum of 30
39 days, and shall be grounds for disciplining the licensee pursuant

1 to Section 1550. The department may assess civil penalties for
2 continued violations as permitted by Section 1548.

3 (3) Except for persons specified in paragraph (2) of
4 subdivision (b), the licensee shall endeavor to ascertain the
5 previous employment history of persons required to be
6 fingerprinted under this subdivision. If it is determined by the
7 State Department of Social Services, on the basis of the
8 fingerprints submitted to the Department of Justice, that the
9 person has been convicted of, or is awaiting trial for, a sex
10 offense against a minor, or has been convicted for an offense
11 specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal
12 Code, or a felony, the State Department of Social Services shall
13 notify the licensee to act immediately to terminate the person's
14 employment, remove the person from the community care
15 facility, or bar the person from entering the community care
16 facility. The State Department of Social Services may
17 subsequently grant an exemption pursuant to subdivision (g). If
18 the conviction or arrest was for another crime, except a minor
19 traffic violation, the licensee shall, upon notification by the State
20 Department of Social Services, act immediately to either (A)
21 terminate the person's employment, remove the person from the
22 community care facility, or bar the person from entering the
23 community care facility; or (B) seek an exemption pursuant to
24 subdivision (g). The State Department of Social Services shall
25 determine if the person shall be allowed to remain in the facility
26 until a decision on the exemption is rendered. A licensee's failure
27 to comply with the department's prohibition of employment,
28 contact with clients, or presence in the facility as required by this
29 paragraph shall be grounds for disciplining the licensee pursuant
30 to Section 1550.

31 (4) The department may issue an exemption on its own motion
32 pursuant to subdivision (g) if the person's criminal history
33 indicates that the person is of good character based on the age,
34 seriousness, and frequency of the conviction or convictions. The
35 department, in consultation with interested parties, shall develop
36 regulations to establish the criteria to grant an exemption
37 pursuant to this paragraph.

38 (5) Concurrently with notifying the licensee pursuant to
39 paragraph (3), the department shall notify the affected individual
40 of his or her right to seek an exemption pursuant to subdivision

1 (g). The individual may seek an exemption only if the licensee
2 terminates the person's employment or removes the person from
3 the facility after receiving notice from the department pursuant to
4 paragraph (3).

5 (d) (1) Before issuing a license, special permit, or certificate
6 of approval to any person or persons to operate or manage a
7 foster family home or certified family home as described in
8 Section 1506, the State Department of Social Services or other
9 approving authority shall secure from an appropriate law
10 enforcement agency a criminal record to determine whether the
11 applicant or any person specified in subdivision (b) has ever been
12 convicted of a crime other than a minor traffic violation or
13 arrested for any crime specified in Section 290 of the Penal
14 Code, for violating Section 245 or 273.5, subdivision (b) of
15 Section 273a or, prior to January 1, 1994, paragraph (2) of
16 Section 273a of the Penal Code, or for any crime for which the
17 department cannot grant an exemption if the person was
18 convicted and the person has not been exonerated.

19 (2) The criminal history information shall include the full
20 criminal record, if any, of those persons.

21 (3) Neither the Department of Justice nor the State Department
22 of Social Services may charge a fee for the fingerprinting of an
23 applicant for a license, special permit, or certificate of approval
24 described in this subdivision. The record, if any, shall be taken
25 into consideration when evaluating a prospective applicant.

26 (4) The following shall apply to the criminal record
27 information:

28 (A) If the applicant or other persons specified in subdivision
29 (b) have convictions that would make the applicant's home unfit
30 as a foster family home or a certified family home, the license,
31 special permit, or certificate of approval shall be denied.

32 (B) If the State Department of Social Services finds that the
33 applicant, or any person specified in subdivision (b) is awaiting
34 trial for a crime other than a minor traffic violation, the State
35 Department of Social Services or other approving authority may
36 cease processing the application until the conclusion of the trial.

37 (C) For the purposes of this subdivision, a criminal record
38 clearance provided under Section 8712 of the Family Code may
39 be used by the department or other approving agency.

1 (D) An applicant for a foster family home license or for
2 certification as a family home, and any other person specified in
3 subdivision (b), shall submit a set of fingerprints to the
4 Department of Justice for the purpose of searching the criminal
5 records of the Federal Bureau of Investigation, in addition to the
6 criminal records search required by subdivision (a). If an
7 applicant meets all other conditions for licensure, except receipt
8 of the Federal Bureau of Investigation's criminal history
9 information for the applicant and all persons described in
10 subdivision (b), the department may issue a license, or the foster
11 family agency may issue a certificate of approval, if the
12 applicant, and each person described in subdivision (b), has
13 signed and submitted a statement that he or she has never been
14 convicted of a crime in the United States, other than a traffic
15 infraction, as defined in paragraph (1) of subdivision (a) of
16 Section 42001 of the Vehicle Code. If, after licensure or
17 certification, the department determines that the licensee,
18 certified foster parent, or any person specified in subdivision (b)
19 has a criminal record, the license may be revoked pursuant to
20 Section 1550 and the certificate of approval revoked pursuant to
21 subdivision (b) of Section 1534. The department may also
22 suspend the license pending an administrative hearing pursuant
23 to Section 1550.5.

24 (5) Any person specified in this subdivision shall, as a part of
25 the application, be fingerprinted and sign a declaration under
26 penalty of perjury regarding any prior criminal convictions or
27 arrests for any crime against a child, spousal or cohabitant abuse
28 or, any crime for which the department cannot grant an
29 exemption if the person was convicted and shall submit these
30 fingerprints to the licensing agency or other approving authority.

31 (6) (A) The foster family agency shall obtain fingerprints
32 from certified home applicants and from persons specified in
33 subdivision (b) and shall submit them directly to the Department
34 of Justice or send them by electronic transmission in a manner
35 approved by the State Department of Social Services. A foster
36 family home licensee or foster family agency shall submit these
37 fingerprints to the Department of Justice, along with a second set
38 of fingerprints for the purpose of searching the records of the
39 Federal Bureau of Investigation or to comply with paragraph (1)
40 of subdivision (b) prior to the person's employment, residence, or

1 initial presence. A foster family agency's failure to submit
2 fingerprints to the Department of Justice, or comply with
3 paragraph (1) of subdivision (h), as required in this section, shall
4 result in a citation of a deficiency, and the immediate civil
5 penalties of one hundred dollars (\$100) per violation, per day for
6 a maximum of five days, unless the violation is a second or
7 subsequent violation within a 12-month period in which case the
8 civil penalties shall be in the amount of one hundred dollars
9 (\$100) per violation for a maximum of 30 days, and shall be
10 grounds for disciplining the licensee pursuant to Section 1550. A
11 violation of the regulation adopted pursuant to Section 1522.04
12 shall result in the citation of a deficiency and an immediate
13 assessment of civil penalties in the amount of one hundred
14 dollars (\$100) per violation, per day for a maximum of five days,
15 unless the violation is a second or subsequent violation within a
16 12-month period in which case the civil penalties shall be in the
17 amount of one hundred dollars (\$100) per violation for a
18 maximum of 30 days, and shall be grounds for disciplining the
19 foster family agency pursuant to Section 1550. A licensee's
20 failure to submit fingerprints to the Department of Justice, or
21 comply with paragraph (1) of subdivision (h), as required in this
22 section, may result in the citation of a deficiency and immediate
23 civil penalties of one hundred dollars (\$100) per violation. A
24 licensee's violation of regulations adopted pursuant to Section
25 1522.04 may result in the citation of a deficiency and an
26 immediate assessment of civil penalties in the amount of one
27 hundred dollars (\$100) per violation. The State Department of
28 Social Services may assess penalties for continued violations, as
29 permitted by Section 1548. The fingerprints shall then be
30 submitted to the State Department of Social Services for
31 processing.

32 (B) Upon request of the licensee, who shall enclose a
33 self-addressed envelope for this purpose, the Department of
34 Justice shall verify receipt of the fingerprints. Within five
35 working days of the receipt of the criminal record or information
36 regarding criminal convictions from the Department of Justice,
37 the department shall notify the applicant of any criminal arrests
38 or convictions. If no arrests or convictions are recorded, the
39 Department of Justice shall provide the foster family home
40 licensee or the foster family agency with a statement of that fact

1 concurrent with providing the information to the State
2 Department of Social Services.

3 (7) If the State Department of Social Services finds that the
4 applicant, or any other person specified in subdivision (b), has
5 been convicted of a crime other than a minor traffic violation, the
6 application shall be denied, unless the director grants an
7 exemption pursuant to subdivision (g).

8 (8) If the State Department of Social Services finds after
9 licensure or the granting of the certificate of approval that the
10 licensee, certified foster parent, or any other person specified in
11 paragraph (2) of subdivision (b), has been convicted of a crime
12 other than a minor traffic violation, the license or certificate of
13 approval may be revoked by the department or the foster family
14 agency, whichever is applicable, unless the director grants an
15 exemption pursuant to subdivision (g). A licensee's failure to
16 comply with the department's prohibition of employment,
17 contact with clients, or presence in the facility as required by
18 paragraph (3) of subdivision (c) shall be grounds for disciplining
19 the licensee pursuant to Section 1550.

20 (e) The State Department of Social Services may not use a
21 record of arrest to deny, revoke, or terminate any application,
22 license, employment, or residence unless the department
23 investigates the incident and secures evidence, whether or not
24 related to the incident of arrest, that is admissible in an
25 administrative hearing to establish conduct by the person that
26 may pose a risk to the health and safety of any person who is or
27 may become a client. The State Department of Social Services is
28 authorized to obtain any arrest or conviction records or reports
29 from any law enforcement agency as necessary to the
30 performance of its duties to inspect, license, and investigate
31 community care facilities and individuals associated with a
32 community care facility.

33 (f) (1) For purposes of this section or any other provision of
34 this chapter, a conviction means a plea or verdict of guilty or a
35 conviction following a plea of nolo contendere. Any action that
36 the State Department of Social Services is permitted to take
37 following the establishment of a conviction may be taken when
38 the time for appeal has elapsed, when the judgment of conviction
39 has been affirmed on appeal, or when an order granting probation
40 is made suspending the imposition of sentence, notwithstanding

1 a subsequent order pursuant to Sections 1203.4 and 1203.4a of
2 the Penal Code permitting the person to withdraw his or her plea
3 of guilty and to enter a plea of not guilty, or setting aside the
4 verdict of guilty, or dismissing the accusation, information, or
5 indictment. For purposes of this section or any other provision of
6 this chapter, the record of a conviction, or a copy thereof certified
7 by the clerk of the court or by a judge of the court in which the
8 conviction occurred, shall be conclusive evidence of the
9 conviction. For purposes of this section or any other provision of
10 this chapter, the arrest disposition report certified by the
11 Department of Justice, or documents admissible in a criminal
12 action pursuant to Section 969b of the Penal Code, shall be prima
13 facie evidence of the conviction, notwithstanding any other
14 provision of law prohibiting the admission of these documents in
15 a civil or administrative action.

16 (2) For purposes of this section or any other provision of this
17 chapter, the department shall consider criminal convictions from
18 another state or federal court as if the criminal offense was
19 committed in this state.

20 (g) (1) After review of the record, the director may grant an
21 exemption from disqualification for a license or special permit as
22 specified in paragraphs (1) and (4) of subdivision (a), or for a
23 license, special permit, or certificate of approval as specified in
24 paragraphs (4) and (5) of subdivision (d), or for employment,
25 residence, or presence in a community care facility as specified
26 in paragraphs (3), (4), and (5) of subdivision (c), if the director
27 has substantial and convincing evidence to support a reasonable
28 belief that the applicant and the person convicted of the crime, if
29 other than the applicant, are of good character as to justify
30 issuance of the license or special permit or granting an exemption
31 for purposes of subdivision (c). Except as otherwise provided in
32 this subdivision, an exemption may not be granted pursuant to
33 this subdivision if the conviction was for any of the following
34 offenses:

35 (A) (i) An offense specified in Section 220, 243.4, or 264.1,
36 subdivision (a) of Section 273a or, prior to January 1, 1994,
37 paragraph (1) of Section 273a, Section 273d, 288, or 289,
38 subdivision (a) of Section 290, or Section 368 of the Penal Code,
39 or was a conviction of another crime against an individual
40 specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558. ~~Notwithstanding subparagraph (B) of paragraph (1) of, and subparagraph (B) of paragraph (2) of, subdivision (h), of Section 1558, if a request for an exemption has been denied, or an exemption has been revoked, the individual shall be prohibited for a period of two years from seeking reinstatement or an exemption, unless the individual has been convicted of a crime for which no exemption can be granted. If a request for an exemption has been denied based on conviction for a crime for which no exemption may be granted, the individual shall be excluded for the remainder of his or her life.~~

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the

1 Department of Motor Vehicles, or a valid photo identification
2 issued by another state or the United States government if the
3 person is not a California resident. Upon request of the licensee,
4 who shall enclose a self-addressed envelope for this purpose, the
5 State Department of Social Services shall verify whether the
6 individual has a clearance that can be transferred.

7 (2) The State Department of Social Services shall hold
8 criminal record clearances in its active files for a minimum of
9 two years after an employee is no longer employed at a licensed
10 facility in order for the criminal record clearance to be
11 transferred.

12 (3) The following shall apply to a criminal record clearance or
13 exemption from the department or a county office with
14 department delegated licensing authority:

15 (A) A county office with department delegated licensing
16 authority may accept a clearance or exemption from the
17 department.

18 (B) The department may accept a clearance or exemption from
19 any county office with department delegated licensing authority.

20 (C) A county office with department delegated licensing
21 authority may accept a clearance or exemption from any other
22 county office with department delegated licensing authority.

23 (4) With respect to notifications issued by the Department of
24 Justice pursuant to Section 11105.2 of the Penal Code concerning
25 an individual whose criminal record clearance was originally
26 processed by the department or a county office with department
27 delegated licensing authority, all of the following shall apply:

28 (A) The Department of Justice shall process a request from the
29 department or a county office with department delegated
30 licensing authority to receive the notice only if all of the
31 following conditions are met:

32 (i) The request shall be submitted to the Department of Justice
33 by the agency to be substituted to receive the notification.

34 (ii) The request shall be for the same applicant type as the
35 type for which the original clearance was obtained.

36 (iii) The request shall contain all prescribed data elements and
37 format protocols pursuant to a written agreement between the
38 department and the Department of Justice.

1 (B) (i) On or before January 7, 2005, the department shall
2 notify the Department of Justice of all county offices that have
3 department delegated licensing authority.

4 (ii) The department shall notify the Department of Justice
5 within 15 calendar days of the date on which a new county office
6 receives department delegated licensing authority or a county's
7 delegated licensing authority is rescinded.

8 (C) The Department of Justice shall charge the department or
9 a county office with department delegated licensing authority a
10 fee for each time a request to substitute the recipient agency is
11 received for purposes of this paragraph. This fee shall not exceed
12 the cost of providing the service.

13 (i) The full criminal record obtained for purposes of this
14 section may be used by the department or by a licensed adoption
15 agency as a clearance required for adoption purposes.

16 (j) If a licensee or facility is required by law to deny
17 employment or to terminate employment of any employee based
18 on written notification from the state department that the
19 employee has a prior criminal conviction or is determined
20 unsuitable for employment under Section 1558, the licensee or
21 facility shall not incur civil liability or unemployment insurance
22 liability as a result of that denial or termination.

23 (k) (1) The Department of Justice shall coordinate with the
24 State Department of Social Services to establish and implement
25 an automated live-scan processing system for fingerprints in the
26 district offices of the Community Care Licensing Division of the
27 State Department of Social Services by July 1, 1999. These
28 live-scan processing units shall be connected to the main system
29 at the Department of Justice by July 1, 1999, and shall become
30 part of that department's pilot project in accordance with its
31 long-range plan. The State Department of Social Services may
32 charge a fee for the costs of processing a set of live-scan
33 fingerprints.

34 (2) The Department of Justice shall provide a report to the
35 Senate and Assembly fiscal committees, the Assembly Human
36 Services Committee, and to the Senate Health and Human
37 Services Committee by April 15, 1999, regarding the completion
38 of backlogged criminal record clearance requests for all facilities
39 licensed by the State Department of Social Services and the

1 progress on implementing the automated live-scan processing
2 system in the two district offices pursuant to paragraph (1).

3 (l) Amendments to this section made in the 1999 portion of the
4 1999–2000 Regular Session shall be implemented commencing
5 60 days after the effective date of the act amending this section in
6 the 1999 portion of the 1999–2000 Regular Session, except that
7 those provisions for the submission of fingerprints for searching
8 the records of the Federal Bureau of Investigation shall be
9 implemented 90 days after the effective date of that act.

10 ~~SEC. 8.~~

11 *SEC. 6.* Section 1568.09 of the Health and Safety Code is
12 amended to read:

13 1568.09. It is the intent of the Legislature in enacting this
14 section to require the fingerprints of those individuals whose
15 contact with residents of residential care facilities for persons
16 with a chronic, life-threatening illness may pose a risk to the
17 residents' health and safety.

18 Therefore, the Legislature supports the use of the fingerprint
19 live-scan technology, as identified in the long-range plan of the
20 Department of Justice for fully automating the processing of
21 fingerprints and other data by the year 1999, otherwise known as
22 the California Crime Information Intelligence System (CAL-CII),
23 to be used for applicant fingerprints. It is the intent of the
24 Legislature, in enacting this section, to require the fingerprints of
25 those individuals whose contact with community care clients
26 may pose a risk to the clients' health and safety. An individual
27 shall be required to obtain either a criminal record clearance from
28 the Department of Justice or a criminal record exemption from
29 the State Department of Social Services before his or her initial
30 presence in a residential care facility for persons with chronic,
31 life-threatening illness.

32 (a) (1) Before issuing a license to any person or persons to
33 operate or manage a residential care facility, the department shall
34 secure from an appropriate law enforcement agency a criminal
35 record to determine whether the applicant or any other person
36 specified in subdivision (b) has ever been convicted of a crime
37 other than a minor traffic violation or arrested for any crime
38 specified in Section 290 of the Penal Code, for violating Section
39 245 or 273.5, subdivision (b) of Section 273a or, prior to January
40 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for

1 any crime for which the department cannot grant an exemption if
2 the person was convicted and the person has not been exonerated.

3 (2) The criminal history information shall include the full
4 criminal record if any, of those persons, and subsequent arrest
5 information pursuant to Section 11105.2 of the Penal Code.

6 (3) The following shall apply to the criminal record
7 information:

8 (A) If the State Department of Social Services finds that the
9 applicant or any other person specified in subdivision (b) has
10 been convicted of a crime, other than a minor traffic violation,
11 the application shall be denied, unless the director grants an
12 exemption pursuant to subdivision (f).

13 (B) If the State Department of Social Services finds that the
14 applicant, or any other person specified in subdivision (b) is
15 awaiting trial for a crime other than a minor traffic violation, the
16 State Department of Social Services may cease processing the
17 application until the conclusion of the trial.

18 (C) If no criminal record information has been recorded, the
19 Department of Justice shall provide the applicant and the State
20 Department of Social Services with a statement of that fact.

21 (D) If the State Department of Social Services finds after
22 licensure that the licensee, or any other person specified in
23 paragraph (2) of subdivision (b), has been convicted of a crime
24 other than a minor traffic violation, the license may be revoked,
25 unless the director grants an exemption pursuant to subdivision
26 (f).

27 (E) An applicant and any other person specified in subdivision
28 (b) shall submit to the Department of Justice a second set of
29 fingerprints for the purpose of searching the records of the
30 Federal Bureau of Investigation, in addition to the search
31 required by this subdivision. If an applicant meets all other
32 conditions for licensure, except receipt of the Federal Bureau of
33 Investigation's criminal history information for the applicant and
34 persons listed in subdivision (b), the department may issue a
35 license if the applicant and each person described by subdivision
36 (b) has signed and submitted a statement that he or she has never
37 been convicted of a crime in the United States, other than a
38 traffic infraction as defined in paragraph (1) of subdivision (a) of
39 Section 42001 of the Vehicle Code. If, after licensure, the
40 department determines that the licensee or person specified in

1 subdivision (b) has a criminal record, the license may be revoked
2 pursuant to subdivision (a) of Section 1568.082. The department
3 may also suspend the license pending an administrative hearing
4 pursuant to subdivision (b) of Section 1568.082.

5 ~~(F) An applicant and any other person specified in subdivision~~
6 ~~(b), as a part of the background clearance process, shall sign a~~
7 ~~declaration under penalty of perjury disclosing whether or not the~~
8 ~~person has any prior criminal convictions or arrests, or has had~~
9 ~~any prior disciplinary action taken against him or her by any~~
10 ~~federal, state, or local governmental agency.~~

11 (b) In addition to the applicant, the provisions of this section
12 shall be applicable to criminal convictions of the following
13 persons:

14 (1) Adults responsible for administration or direct supervision
15 of staff of the facility.

16 (2) Any person, other than a resident, residing in the facility.

17 (3) Any person who provides resident assistance in dressing,
18 grooming, bathing, or personal hygiene. Any nurse assistant or
19 home health aide meeting the requirements of Section 1338.5 or
20 1736.6, respectively, who is not employed, retained, or
21 contracted by the licensee, and who has been certified or
22 recertified on or after July 1, 1998, shall be deemed to meet the
23 criminal record clearance requirements of this section. A certified
24 nurse assistant and certified home health aide who will be
25 providing client assistance and who falls under this exemption
26 shall provide one copy of his or her current certification, prior to
27 providing care, to the residential care facility for persons with
28 chronic, life-threatening illness. The facility shall maintain the
29 copy of the certification on file as long as care is being provided
30 by the certified nurse assistant or certified home health aide at the
31 facility. Nothing in this paragraph restricts the right of the
32 department to exclude a certified nurse assistant or certified
33 home health aide from a licensed residential care facility for
34 persons with chronic, life-threatening illness pursuant to Section
35 1568.092.

36 (4) (A) Any staff person, volunteer, or employee who has
37 contact with the residents.

38 (B) A volunteer shall be exempt from the requirements of this
39 subdivision if he or she is a relative, significant other, or close
40 friend of a client receiving care in the facility and the volunteer

1 does not provide direct care and supervision of residents. A
2 volunteer who provides direct care and supervision shall be
3 exempt if the volunteer is a resident's spouse, significant other,
4 close friend, or family member and provides direct care and
5 supervision to that resident only at the request of the resident.
6 The department may define in regulations persons similar to
7 those described in this subparagraph who may be exempt from
8 the requirements of this subdivision.

9 (5) If the applicant is a firm, partnership, association, or
10 corporation, the chief executive officer or other person serving in
11 that capacity.

12 (6) Additional officers of the governing body of the applicant,
13 or other persons with a financial interest in the applicant, as
14 determined necessary by the department by regulation. The
15 criteria used in the development of these regulations shall be
16 based on the person's capability to exercise substantial influence
17 over the operation of the facility.

18 (c) (1) (A) Subsequent to initial licensure, any person
19 specified in subdivision (b) and not exempted from fingerprinting
20 shall, as a condition to employment, residence, or presence in a
21 residential care facility, be fingerprinted and sign a declaration
22 under penalty of perjury regarding any prior criminal
23 convictions. The licensee shall submit these fingerprints to the
24 Department of Justice, along with a second set of fingerprints, for
25 the purpose of searching the records of the Federal Bureau of
26 Investigation, or to comply with paragraph (1) of subdivision (g),
27 prior to the person's employment, residence, or initial presence in
28 the residential care facility.

29 (B) These fingerprints shall be on a card provided by the State
30 Department of Social Services for the purpose of obtaining a
31 permanent set of fingerprints and submitted to the Department of
32 Justice by the licensee or sent by electronic transmission in a
33 manner approved by the State Department of Social Services. A
34 licensee's failure to submit fingerprints to the Department of
35 Justice, or to comply with paragraph (1) of subdivision (g), as
36 required in this section, shall result in the citation of a deficiency
37 and an immediate assessment of civil penalties in the amount of
38 one hundred dollars (\$100) per violation, per day for a maximum
39 of five days, unless the violation is a second or subsequent
40 violation within a 12-month period in which case the civil

1 penalties shall be in the amount of one hundred dollars (\$100)
2 per violation for a maximum of 30 days, and shall be grounds for
3 disciplining the licensee pursuant to Section 1568.082. The State
4 Department of Social Services may assess civil penalties for
5 continued violations as allowed in Section 1568.0822. The
6 fingerprints shall then be submitted to the State Department of
7 Social Services for processing. The licensee shall maintain and
8 make available for inspection documentation of the individual's
9 clearance or exemption.

10 (2) A violation of the regulations adopted pursuant to Section
11 1522.04 shall result in the citation of a deficiency and an
12 immediate assessment of civil penalties in the amount of one
13 hundred dollars (\$100) per violation per day for a maximum of
14 five days, unless the violation is a second or subsequent violation
15 within a 12-month period in which case the civil penalties shall
16 be in the amount of one hundred dollars (\$100) per violation for
17 a maximum of 30 days, and shall be grounds for disciplining the
18 licensee pursuant to Section 1568.082. The department may
19 assess civil penalties for continued violations as permitted by
20 Section 1568.0822.

21 (3) Within 14 calendar days of the receipt of the fingerprints,
22 the Department of Justice shall notify the State Department of
23 Social Services of the criminal record information, as provided
24 for in this subdivision. If no criminal record information has been
25 recorded, the Department of Justice shall provide the licensee
26 and the State Department of Social Services with a statement of
27 that fact within 14 calendar days of receipt of the fingerprints. If
28 new fingerprints are required for processing, the Department of
29 Justice shall, within 14 calendar days from the date of receipt of
30 the fingerprints, notify the licensee that the fingerprints were
31 illegible. When live-scan technology is operational, as defined in
32 Section 1522.04, the Department of Justice shall notify the
33 department, as required by that section, and shall notify the
34 licensee by mail within 14 days of electronic transmission of the
35 fingerprints to the Department of Justice, if the person has no
36 criminal history record.

37 (4) Except for persons specified in paragraph (2) of
38 subdivision (b), the licensee shall endeavor to ascertain the
39 previous employment history of persons required to be
40 fingerprinted under this subdivision. If it is determined by the

1 State Department of Social Services, on the basis of the
2 fingerprints submitted to the Department of Justice, that the
3 person has been convicted of a sex offense against a minor, an
4 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of
5 the Penal Code, or a felony, the department shall notify the
6 licensee to act immediately to terminate the person's
7 employment, remove the person from the residential care facility,
8 or bar the person from entering the residential care facility. The
9 department may subsequently grant an exemption pursuant to
10 subdivision (f). If the conviction was for another crime, except a
11 minor traffic violation, the licensee shall, upon notification by the
12 department, act immediately to either (1) terminate the person's
13 employment, remove the person from the residential care facility,
14 or bar the person from entering the residential care facility; or (2)
15 seek an exemption pursuant to subdivision (f). The department
16 shall determine if the person shall be allowed to remain in the
17 facility until a decision on the exemption is rendered. A
18 licensee's failure to comply with the department's prohibition of
19 employment, contact with clients, or presence in the facility as
20 required by this paragraph shall result in a citation of deficiency
21 and an immediate assessment of civil penalties by the department
22 against the licensee, in the amount of one hundred dollars (\$100)
23 per violation, per day for a maximum of five days, unless the
24 violation is a second or subsequent violation within a 12-month
25 period in which case the civil penalties shall be in the amount of
26 one hundred dollars (\$100) per violation for a maximum of 30
27 days, and shall be grounds for disciplining the licensee pursuant
28 to Section 1568.082.

29 (5) The department may issue an exemption on its own motion
30 pursuant to subdivision (f) if the person's criminal history
31 indicates that the person is of good character based on the age,
32 seriousness, and frequency of the conviction or convictions. The
33 department, in consultation with interested parties, shall develop
34 regulations to establish the criteria to grant an exemption
35 pursuant to this paragraph.

36 (6) Concurrently with notifying the licensee pursuant to
37 paragraph (4), the department shall notify the affected individual
38 of his or her right to seek an exemption pursuant to subdivision
39 (f). The individual may seek an exemption only if the licensee
40 terminates the person's employment or removes the person from

1 the facility after receiving notice from the department pursuant to
2 paragraph (4).

3 (d) (1) For purposes of this section or any other provision of
4 this chapter, a conviction means a plea or verdict of guilty or a
5 conviction following a plea of nolo contendere. Any action that
6 the department is permitted to take following the establishment
7 of a conviction may be taken when the time for appeal has
8 elapsed, when the judgment of conviction has been affirmed on
9 appeal, or when an order granting probation is made suspending
10 the imposition of the sentence, notwithstanding a subsequent
11 order pursuant to Sections 1203.4 and 1203.4a of the Penal Code
12 permitting that person to withdraw his or her plea of guilty and to
13 enter a plea of not guilty, setting aside the verdict of guilty, or
14 dismissing the accusation, information, or indictment. For
15 purposes of this chapter, the record of a conviction, or a copy
16 thereof certified by the clerk of the court or by a judge of the
17 court in which the conviction occurred, shall be conclusive
18 evidence of the conviction. For purposes of this section or any
19 other provision of this chapter, the arrest disposition report
20 certified by the Department of Justice, or documents admissible
21 in a criminal action pursuant to Section 969b of the Penal Code,
22 shall be prima facie evidence of the conviction, notwithstanding
23 any other provision of law prohibiting the admission of these
24 documents in a civil or administrative action.

25 (2) For purposes of this section or any other provision of this
26 chapter, the department shall consider criminal convictions from
27 another state or federal court as if the criminal offense was
28 committed in this state.

29 (e) The State Department of Social Services may not use a
30 record of arrest to deny, revoke, or terminate any application,
31 license, employment, or residence unless the department
32 investigates the incident and secures evidence, whether or not
33 related to the incident of arrest, that is admissible in an
34 administrative hearing to establish conduct by the person that
35 may pose a risk to the health and safety of any person who is or
36 may become a client. The State Department of Social Services is
37 authorized to obtain any arrest or conviction records or reports
38 from any law enforcement agency as necessary to the
39 performance of its duties to inspect, license, and investigate

1 community care facilities and individuals associated with a
2 community care facility.

3 (f) (1) After review of the record, the director may grant an
4 exemption from disqualification for a license as specified in
5 paragraphs (1) and (4) of subdivision (a), or for employment,
6 residence, or presence in a residential care facility as specified in
7 paragraphs (4), (5), and (6) of subdivision (c) if the director has
8 substantial and convincing evidence to support a reasonable
9 belief that the applicant and the person convicted of the crime, if
10 other than the applicant, are of such good character as to justify
11 issuance of the license or special permit or granting an exemption
12 for purposes of subdivision (c). However, an exemption may not
13 be granted pursuant to this subdivision if the conviction was for
14 any of the following offenses:

15 (A) An offense specified in Section 220, 243.4, or 264.1,
16 subdivision (a) of Section 273a or, prior to January 1, 1994,
17 paragraph (1) of Section 273a, Section 273d, 288, or 289,
18 subdivision (a) of Section 290, or Section 368 of the Penal Code,
19 or was a conviction of another crime against an individual
20 specified in subdivision (c) of Section 667.5 of the Penal Code.

21 (B) A felony offense specified in Section 729 of the Business
22 and Professional Code or Section 206 or 215, subdivision (a) of
23 Section 347, subdivision (b) of Section 417, or subdivision (a) of
24 Section 451 of the Penal Code.

25 (2) The department may not prohibit a person from being
26 employed or having contact with clients in a facility on the basis
27 of a denied criminal record exemption request or arrest
28 information unless the department complies with the
29 requirements of Section 1568.092. ~~Notwithstanding~~
30 ~~subparagraph (B) of paragraph (1) of, and subparagraph (B) of~~
31 ~~paragraph (2) of, subdivision (h) of Section 1568.092, if a request~~
32 ~~for an exemption has been denied, or an exemption has been~~
33 ~~revoked, the individual shall be prohibited for a period of two~~
34 ~~years from seeking reinstatement or an exemption, unless the~~
35 ~~individual has been convicted of a crime for which no exemption~~
36 ~~can be granted. If a request for an exemption has been denied~~
37 ~~based on conviction for a crime for which no exemption may be~~
38 ~~granted, the individual shall be excluded for the remainder of his~~
39 ~~or her life.~~

1 (g) (1) For purposes of compliance with this section, the
2 department may permit an individual to transfer a current
3 criminal record clearance, as defined in subdivision (a), from one
4 facility to another, as long as the criminal record clearance has
5 been processed through a state licensing district office, and is
6 being transferred to another facility licensed by a state licensing
7 district office. The request shall be in writing to the department,
8 and shall include a copy of the person's driver's license or valid
9 identification card issued by the Department of Motor Vehicles,
10 or a valid photo identification issued by another state or the
11 United States government if the person is not a California
12 resident. Upon request of the licensee, who shall enclose a
13 self-addressed stamped envelope for this purpose, the department
14 shall verify whether the individual has a clearance that can be
15 transferred.

16 (2) The State Department of Social Services shall hold
17 criminal record clearances in its active files for a minimum of
18 two years after an employee is no longer employed at a licensed
19 facility in order for the criminal record clearance to be
20 transferred.

21 (h) If a licensee or facility is required by law to deny
22 employment or to terminate employment of any employee based
23 on written notification from the state department that the
24 employee has a prior criminal conviction or is determined
25 unsuitable for employment under Section 1568.092, the licensee
26 or facility shall not incur civil liability or unemployment
27 insurance liability as a result of that denial or termination.

28 (i) (1) The Department of Justice shall charge a fee sufficient
29 to cover its cost in providing services to comply with the 14-day
30 requirement contained in subdivision (c) for provision to the
31 department of criminal record information.

32 (2) Paragraph (1) shall cease to be implemented when the
33 department adopts emergency regulations pursuant to Section
34 1522.04, and shall become inoperative when permanent
35 regulations are adopted under that section.

36 (j) Amendments to the provisions of this section made in the
37 1998 calendar year shall be implemented commencing 60 days
38 after the effective date of the act amending this section in the
39 1998 calendar year, except those provisions for the submission of
40 fingerprints for searching the records of the Federal Bureau of

1 Investigation, which shall be implemented commencing January
2 1, 1999.

3 ~~SEC. 9.~~

4 *SEC. 7.* Section 1569.17 of the Health and Safety Code is
5 amended to read:

6 1569.17. The Legislature recognizes the need to generate
7 timely and accurate positive fingerprint identification of
8 applicants as a condition of issuing licenses, permits, or
9 certificates of approval for persons to operate or provide direct
10 care services in a residential care facility for the elderly. The
11 Legislature supports the use of the fingerprint live-scan
12 technology, as identified in the long-range plan of the
13 Department of Justice for fully automating the processing of
14 fingerprints and other data by the year 1999. It is the intent of the
15 Legislature in enacting this section to require the fingerprints of
16 those individuals whose contact with clients of residential care
17 facilities for the elderly may pose a risk to the clients' health and
18 safety. An individual shall be required to obtain either a criminal
19 record clearance from the Department of Justice or a criminal
20 record exemption from the State Department of Social Services
21 before his or her initial presence in a residential care facility for
22 the elderly.

23 (a) (1) Before issuing a license to any person or persons to
24 operate or manage a residential care facility for the elderly, the
25 department shall secure from an appropriate law enforcement
26 agency a criminal record to determine whether the applicant or
27 any other person specified in subdivision (b) has ever been
28 convicted of a crime other than a minor traffic violation or
29 arrested for any crime specified in Section 290 of the Penal
30 Code, for violating Section 245 or 273.5, subdivision (b) of
31 Section 273a or, prior to January 1, 1994, paragraph (2) of
32 Section 273a of the Penal Code, or for any crime for which the
33 department cannot grant an exemption if the person was
34 convicted and the person has not been exonerated.

35 (2) The criminal history information shall include the full
36 criminal record, if any, of those persons, and subsequent arrest
37 information pursuant to Section 11105.2 of the Penal Code.

38 (3) The following shall apply to the criminal record
39 information:

1 (A) If the State Department of Social Services finds that the
2 applicant or any other person specified in subdivision (b) has
3 been convicted of a crime, other than a minor traffic violation,
4 the application shall be denied, unless the director grants an
5 exemption pursuant to subdivision (f).

6 (B) If the State Department of Social Services finds that the
7 applicant, or any other person specified in subdivision (b) is
8 awaiting trial for a crime other than a minor traffic violation, the
9 State Department of Social Services may cease processing the
10 application until the conclusion of the trial.

11 (C) If no criminal record information has been recorded, the
12 Department of Justice shall provide the applicant and the State
13 Department of Social Services with a statement of that fact.

14 (D) If the State Department of Social Services finds after
15 licensure that the licensee, or any other person specified in
16 paragraph (2) of subdivision (b), has been convicted of a crime
17 other than a minor traffic violation, the license may be revoked,
18 unless the director grants an exemption pursuant to subdivision
19 (f).

20 (E) An applicant and any other person specified in subdivision
21 (b) shall submit a second set of fingerprints to the Department of
22 Justice, for the purpose of searching the records of the Federal
23 Bureau of Investigation, in addition to the search required by
24 subdivision (a). If an applicant meets all other conditions for
25 licensure, except receipt of the Federal Bureau of Investigation's
26 criminal history information for the applicant and persons listed
27 in subdivision (b), the department may issue a license if the
28 applicant and each person described by subdivision (b) has
29 signed and submitted a statement that he or she has never been
30 convicted of a crime in the United States, other than a traffic
31 infraction as defined in paragraph (1) of subdivision (a) of
32 Section 42001 of the Vehicle Code. If, after licensure, the
33 department determines that the licensee or person specified in
34 subdivision (b) has a criminal record, the license may be revoked
35 pursuant to Section 1569.50. The department may also suspend
36 the license pending an administrative hearing pursuant to
37 Sections 1569.50 and 1569.51.

38 ~~(F) An applicant and any other person specified in subdivision~~
39 ~~(b), as a part of the background clearance process, shall sign a~~
40 ~~declaration under penalty of perjury disclosing whether or not the~~

1 ~~person has any prior criminal convictions or arrests, or has had~~
2 ~~any prior disciplinary action taken against him or her by any~~
3 ~~federal, state, or local governmental agency.~~

4 (b) In addition to the applicant, the provisions of this section
5 shall apply to criminal convictions of the following persons:

6 (1) (A) Adults responsible for administration or direct
7 supervision of staff.

8 (B) Any person, other than a client, residing in the facility.
9 Residents of unlicensed independent senior housing facilities that
10 are located in contiguous buildings on the same property as a
11 residential care facility for the elderly shall be exempt from these
12 requirements.

13 (C) Any person who provides client assistance in dressing,
14 grooming, bathing, or personal hygiene. Any nurse assistant or
15 home health aide meeting the requirements of Section 1338.5 or
16 1736.6, respectively, who is not employed, retained, or
17 contracted by the licensee, and who has been certified or
18 recertified on or after July 1, 1998, shall be deemed to meet the
19 criminal record clearance requirements of this section. A certified
20 nurse assistant and certified home health aide who will be
21 providing client assistance and who falls under this exemption
22 shall provide one copy of his or her current certification, prior to
23 providing care, to the residential care facility for the elderly. The
24 facility shall maintain the copy of the certification on file as long
25 as the care is being provided by the certified nurse assistant or
26 certified home health aide at the facility. Nothing in this
27 paragraph restricts the right of the department to exclude a
28 certified nurse assistant or certified home health aide from a
29 licensed residential care facility for the elderly pursuant to
30 Section 1569.58.

31 (D) Any staff person, volunteer, or employee who has contact
32 with the clients.

33 (E) If the applicant is a firm, partnership, association, or
34 corporation, the chief executive officer or other person serving in
35 a similar capacity.

36 (F) Additional officers of the governing body of the applicant
37 or other persons with a financial interest in the applicant, as
38 determined necessary by the department by regulation. The
39 criteria used in the development of these regulations shall be

1 based on the person's capability to exercise substantial influence
2 over the operation of the facility.

3 (2) The following persons are exempt from requirements
4 applicable under paragraph (1):
5

6 (A) A spouse, relative, significant other, or close friend of a
7 client shall be exempt if this person is visiting the client or
8 provides direct care and supervision to that client only.

9 (B) A volunteer to whom all of the following apply:

10 (i) The volunteer is at the facility during normal waking hours.

11 (ii) The volunteer is directly supervised by the licensee or a
12 facility employee with a criminal record clearance or exemption.

13 (iii) The volunteer spends no more than 16 hours per week at
14 the facility.

15 (iv) The volunteer does not provide clients with assistance in
16 dressing, grooming, bathing, or personal hygiene.

17 (v) The volunteer is not left alone with clients in care.

18 (C) A third-party contractor retained by the facility if the
19 contractor is not left alone with clients in care.

20 (D) A third-party contractor or other business professional
21 retained by a client and at the facility at the request or by
22 permission of that client. These individuals may not be left alone
23 with other clients.

24 (E) Licensed or certified medical professionals are exempt
25 from fingerprint and criminal background check requirements
26 imposed by community care licensing. This exemption does not
27 apply to a person who is a community care facility licensee or an
28 employee of the facility.

29 (F) Employees of licensed home health agencies and members
30 of licensed hospice interdisciplinary teams who have contact
31 with a resident of a residential care facility at the request of the
32 resident or resident's legal decisionmaker are exempt from
33 fingerprint and criminal background check requirements imposed
34 by community care licensing. This exemption does not apply to a
35 person who is a community care facility licensee or an employee
36 of the facility.

37 (G) Clergy and other spiritual caregivers who are performing
38 services in common areas of the residential care facility, or who
39 are advising an individual resident at the request of, or with
40 permission of, the resident, are exempt from fingerprint and

1 criminal background check requirements imposed by community
2 care licensing. This exemption does not apply to a person who is
3 a community care facility licensee or an employee of the facility.

4 (H) Any person similar to those described in this subdivision,
5 as defined by the department in regulations.

6 (I) Nothing in this paragraph shall prevent a licensee from
7 requiring a criminal record clearance of any individual exempt
8 from the requirements of this section, provided that the
9 individual has client contact.

10 (c) (1) (A) Subsequent to initial licensure, any person
11 required to be fingerprinted pursuant to subdivision (b) shall, as a
12 condition to employment, residence, or presence in a residential
13 facility for the elderly, be fingerprinted and sign a declaration
14 under penalty of perjury regarding any prior criminal
15 convictions. The licensee shall submit these fingerprints, along
16 with a second set of fingerprints for the purpose of searching the
17 records of the Federal Bureau of Investigation, to the Department
18 of Justice, or to comply with paragraph (1) of subdivision (g)
19 prior to the person's employment, residence, or initial presence in
20 the residential care facility for the elderly.

21 (B) These fingerprints shall be on a fingerprint card provided
22 by the State Department of Social Services, or sent by electronic
23 transmission in a manner approved by the State Department of
24 Social Services and the Department of Justice and submitted to
25 the Department of Justice by the licensee. A licensee's failure to
26 submit fingerprints to the Department of Justice, or to comply
27 with paragraph (1) of subdivision (g), as required in this section,
28 shall result in the citation of a deficiency and an immediate
29 assessment of civil penalties in the amount of one hundred
30 dollars (\$100) per violation, per day for a maximum of five days,
31 unless the violation is a second or subsequent violation within a
32 12-month period in which case the civil penalties shall be in the
33 amount of one hundred dollars (\$100) per violation for a
34 maximum of 30 days, and shall be grounds for disciplining the
35 licensee pursuant to Section 1569.50. The State Department of
36 Social Services may assess civil penalties for continued
37 violations as permitted by Section 1569.49. The licensee shall
38 then submit these fingerprints to the State Department of Social
39 Services for processing. Documentation of the individual's
40 clearance or exemption shall be maintained by the licensee and

1 be available for inspection. When live-scan technology is
2 operational, as defined in Section 1522.04, the Department of
3 Justice shall notify the department, as required by that section,
4 and notify the licensee by mail within 14 days of electronic
5 transmission of the fingerprints to the Department of Justice, if
6 the person has no criminal record. A violation of the regulations
7 adopted pursuant to Section 1522.04 shall result in the citation of
8 a deficiency and an immediate assessment of civil penalties in
9 the amount of one hundred dollars (\$100) per violation, per day
10 for a maximum of five days, unless the violation is a second or
11 subsequent violation within a 12-month period in which case the
12 civil penalties shall be in the amount of one hundred dollars
13 (\$100) per violation for a maximum of 30 days, and shall be
14 grounds for disciplining the licensee pursuant to Section 1569.50.
15 The department may assess civil penalties for continued
16 violations as permitted by Section 1569.49.

17 (2) Within 14 calendar days of the receipt of the fingerprints,
18 the Department of Justice shall notify the State Department of
19 Social Services of the criminal record information, as provided
20 for in this subdivision. If no criminal record information has been
21 recorded, the Department of Justice shall provide the licensee
22 and the State Department of Social Services with a statement of
23 that fact within 14 calendar days of receipt of the fingerprints. If
24 new fingerprints are required for processing, the Department of
25 Justice shall, within 14 calendar days from the date of receipt of
26 the fingerprints, notify the licensee that the fingerprints were
27 illegible.

28 (3) Except for persons specified in paragraph (2) of
29 subdivision (b), the licensee shall endeavor to ascertain the
30 previous employment history of persons required to be
31 fingerprinted under this subdivision. If the State Department of
32 Social Services determines, on the basis of the fingerprints
33 submitted to the Department of Justice, that the person has been
34 convicted of a sex offense against a minor, an offense specified
35 in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or
36 a felony, the State Department of Social Services shall notify the
37 licensee in writing within 15 calendar days of the receipt of the
38 notification from the Department of Justice to act immediately to
39 terminate the person's employment, remove the person from the
40 residential care facility for the elderly, or bar the person from

1 entering the residential care facility for the elderly. The State
2 Department of Social Services may subsequently grant an
3 exemption pursuant to subdivision (f). If the conviction was for
4 another crime, except a minor traffic violation, the licensee shall,
5 upon notification by the State Department of Social Services, act
6 immediately to either (1) terminate the person's employment,
7 remove the person from the residential care facility for the
8 elderly, or bar the person from entering the residential care
9 facility for the elderly or (2) seek an exemption pursuant to
10 subdivision (f). The department shall determine if the person
11 shall be allowed to remain in the facility until a decision on the
12 exemption is rendered by the department. A licensee's failure to
13 comply with the department's prohibition of employment,
14 contact with clients, or presence in the facility as required by this
15 paragraph shall result in a citation of deficiency and an
16 immediate assessment of civil penalties by the department
17 against the licensee, in the amount of one hundred dollars (\$100)
18 per violation, per day for a maximum of five days, unless the
19 violation is a second or subsequent violation within a 12-month
20 period in which case the civil penalties shall be in the amount of
21 one hundred dollars (\$100) per violation for a maximum of 30
22 days, and shall be grounds for disciplining the licensee pursuant
23 to Section 1569.50.

24 (4) The department may issue an exemption on its own motion
25 pursuant to subdivision (f) if the person's criminal history
26 indicates that the person is of good character based on the age,
27 seriousness, and frequency of the conviction or convictions. The
28 department, in consultation with interested parties, shall develop
29 regulations to establish the criteria to grant an exemption
30 pursuant to this paragraph.

31 (5) Concurrently with notifying the licensee pursuant to
32 paragraph (4), the department shall notify the affected individual
33 of his or her right to seek an exemption pursuant to subdivision
34 (f). The individual may seek an exemption only if the licensee
35 terminates the person's employment or removes the person from
36 the facility after receiving notice from the department pursuant to
37 paragraph (4).

38 (d) (1) For purposes of this section or any other provision of
39 this chapter, a conviction means a plea or verdict of guilty or a
40 conviction following a plea of nolo contendere. Any action that

1 the department is permitted to take following the establishment
2 of a conviction may be taken when the time for appeal has
3 elapsed, when the judgment of conviction has been affirmed on
4 appeal or when an order granting probation is made suspending
5 the imposition of the sentence, notwithstanding a subsequent
6 order pursuant to the provisions of Sections 1203.4 and 1203.4a
7 of the Penal Code permitting a person to withdraw his or her plea
8 of guilty and to enter a plea of not guilty, or setting aside the
9 verdict of guilty, or dismissing the accusation, information, or
10 indictment. For purposes of this section or any other provision of
11 this chapter, the record of a conviction, or a copy thereof certified
12 by the clerk of the court or by a judge of the court in which the
13 conviction occurred, shall be conclusive evidence of the
14 conviction. For purposes of this section or any other provision of
15 this chapter, the arrest disposition report certified by the
16 Department of Justice or documents admissible in a criminal
17 action pursuant to Section 969b of the Penal Code shall be prima
18 facie evidence of the conviction, notwithstanding any other
19 provision of law prohibiting the admission of these documents in
20 a civil or administrative action.

21 (2) For purposes of this section or any other provision of this
22 chapter, the department shall consider criminal convictions from
23 another state or federal court as if the criminal offense was
24 committed in this state.

25 (e) The State Department of Social Services may not use a
26 record of arrest to deny, revoke, or terminate any application,
27 license, employment, or residence unless the department
28 investigates the incident and secures evidence, whether or not
29 related to the incident of arrest, that is admissible in an
30 administrative hearing to establish conduct by the person that
31 may pose a risk to the health and safety of any person who is or
32 may become a client. The State Department of Social Services is
33 authorized to obtain any arrest or conviction records or reports
34 from any law enforcement agency as necessary to the
35 performance of its duties to inspect, license, and investigate
36 community care facilities and individuals associated with a
37 community care facility.

38 (f) (1) After review of the record, the director may grant an
39 exemption from disqualification for a license as specified in
40 paragraphs (1) and (4) of subdivision (a), or for employment,

1 residence, or presence in a residential care facility for the elderly
2 as specified in paragraphs (4), (5), and (6) of subdivision (c) if
3 the director has substantial and convincing evidence to support a
4 reasonable belief that the applicant and the person convicted of
5 the crime, if other than the applicant, are of such good character
6 as to justify issuance of the license or special permit or granting
7 an exemption for purposes of subdivision (c). However, an
8 exemption may not be granted pursuant to this subdivision if the
9 conviction was for any of the following offenses:

10 (A) An offense specified in Section 220, 243.4, or 264.1,
11 subdivision (a) of Section 273a or, prior to January 1, 1994,
12 paragraph (1) of Section 273a, Section 273d, 288, or 289,
13 subdivision (a) of Section 290, or Section 368 of the Penal Code,
14 or was a conviction of another crime against an individual
15 specified in subdivision (c) of Section 667.5 of the Penal Code.

16 (B) A felony offense specified in Section 729 of the Business
17 and Professions Code or Section 206 or 215, subdivision (a) of
18 Section 347, subdivision (b) of Section 417, or subdivision (a) of
19 Section 451 of the Penal Code.

20 (2) The director shall notify in writing the licensee or the
21 applicant of his or her decision within 60 days of receipt of all
22 information from the applicant and other sources determined
23 necessary by the director for the rendering of a decision pursuant
24 to this subdivision.

25 (3) The department may not prohibit a person from being
26 employed or having contact with clients in a facility on the basis
27 of a denied criminal record exemption request or arrest
28 information unless the department complies with the
29 requirements of Section 1569.58. ~~Notwithstanding subparagraph~~
30 ~~(B) of paragraph (1) of, and subparagraph (B) of paragraph (2)~~
31 ~~of, subdivision (h) of Section 1569.58, if a request for an~~
32 ~~exemption has been denied, or an exemption has been revoked,~~
33 ~~the individual shall be prohibited for a period of two years from~~
34 ~~seeking reinstatement or an exemption, unless the individual has~~
35 ~~been convicted of a crime for which no exemption can be~~
36 ~~granted. If a request for an exemption has been denied based on~~
37 ~~conviction for a crime for which no exemption may be granted,~~
38 ~~the individual shall be excluded for the remainder of his or her~~
39 ~~life.~~

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be submitted in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred under this section.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing on January 1, 1999.

~~SEC. 10.~~

SEC. 8. Section 1575.7 of the Health and Safety Code is amended to read:

1575.7. (a) (1) The State Department of Health Services, prior to issuing a new license, shall obtain a criminal clearance for the administrator, program director, and fiscal officer of the

1 proposed adult day health care center. The department shall
2 obtain the criminal records clearances each time these positions
3 are to be filled. These criminal record clearances, in accordance
4 with subdivisions (b) and (c), shall be completed prior to direct
5 contact with residents.

6 (2) A criminal record clearance shall be complete when the
7 department has obtained the person's criminal record information
8 from the Department of Justice and has determined that the
9 person is not disqualified from engaging in the activity for which
10 clearance is required.

11 (3) The criminal record clearance shall require the
12 administrator, program director, and fiscal officer to submit
13 electronic fingerprint images to the department.

14 (b) A past conviction of any crime, especially any crime
15 involving misuse of funds or involving physical abuse shall, in
16 the discretion of the department, be grounds for denial of the
17 license, and shall be grounds to prohibit the person from
18 providing services in an adult day health care center.

19 (c) Suspension of the applicant from the Medi-Cal program or
20 prior violations of statutory provisions or regulations relating to
21 licensure of a health facility, community care facility, or clinic
22 shall also be grounds for a denial of licensure, where determined
23 by the state department to indicate a substantial probability that
24 the applicant will not comply with this chapter and regulations
25 adopted hereunder.

26 (d) No applicant which is licensed as a health facility,
27 community care facility, or clinic may be issued a license for an
28 adult day health care center while there exists a subsisting,
29 uncorrected violation of the statutes or regulations relating to
30 such licensure.

31 ~~(e) A person subject to a criminal clearance under this section~~
32 ~~that has been disqualified from engaging in the activity for which~~
33 ~~clearance is required shall not reapply for licensure until two~~
34 ~~years after notification of denial of the criminal clearance.~~

35 ~~(f)~~

36 (e) The department shall develop procedures to ensure that any
37 licensee, direct care staff, or certificate holder for whom a
38 criminal record has been obtained pursuant to this section or
39 Section 1265.5 or 1736 shall not be required to obtain multiple
40 criminal record clearances.

~~SEC. 11.~~

SEC. 9. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as defined in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety. An individual shall be required to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services before his or her initial presence in a child day care facility.

(a) (1) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04, 2004–05, and 2005–06 fiscal years, neither the Department of Justice nor the department may charge a fee for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a

1 license, or for obtaining a criminal record of an applicant
2 pursuant to this section.

3 (4) The following shall apply to the criminal record
4 information:

5 (A) If the State Department of Social Services finds that the
6 applicant or any other person specified in subdivision (b) has
7 been convicted of a crime, other than a minor traffic violation,
8 the application shall be denied, unless the director grants an
9 exemption pursuant to subdivision (f).

10 (B) If the State Department of Social Services finds that the
11 applicant, or any other person specified in subdivision (b), is
12 awaiting trial for a crime other than a minor traffic violation, the
13 State Department of Social Services may cease processing the
14 application until the conclusion of the trial.

15 (C) If no criminal record information has been recorded, the
16 Department of Justice shall provide the applicant and the State
17 Department of Social Services with a statement of that fact.

18 (D) If the State Department of Social Services finds after
19 licensure that the licensee, or any other person specified in
20 paragraph (2) of subdivision (b), has been convicted of a crime
21 other than a minor traffic violation, the license may be revoked,
22 unless the director grants an exemption pursuant to subdivision
23 (f).

24 (E) An applicant and any other person specified in subdivision
25 (b) shall submit a second set of fingerprints to the Department of
26 Justice, for the purpose of searching the records of the Federal
27 Bureau of Investigation, in addition to the search required by
28 subdivision (a). If an applicant meets all other conditions for
29 licensure, except receipt of the Federal Bureau of Investigation's
30 criminal history information for the applicant and persons listed
31 in subdivision (b), the department may issue a license if the
32 applicant and each person described by subdivision (b) has
33 signed and submitted a statement that he or she has never been
34 convicted of a crime in the United States, other than a traffic
35 infraction as defined in paragraph (1) of subdivision (a) of
36 Section 42001 of the Vehicle Code. If, after licensure, the
37 department determines that the licensee or person specified in
38 subdivision (b) has a criminal record, the license may be revoked
39 pursuant to Section 1596.885. The department may also suspend

1 the license pending an administrative hearing pursuant to Section
2 1596.886.

3 ~~(F) An applicant and any other person specified in subdivision~~
4 ~~(b), as a part of the background clearance process, shall sign a~~
5 ~~declaration under penalty of perjury disclosing whether or not the~~
6 ~~person has any prior criminal convictions or arrests, or has had~~
7 ~~any prior disciplinary action taken against him or her by any~~
8 ~~federal, state, or local governmental agency.~~

9 (b) (1) In addition to the applicant, this section shall be
10 applicable to criminal convictions of the following persons:

11 (A) Adults responsible for administration or direct supervision
12 of staff.

13 (B) Any person, other than a child, residing in the facility.

14 (C) Any person who provides care and supervision to the
15 children.

16 (D) Any staff person, volunteer, or employee who has contact
17 with the children.

18 (i) A volunteer providing time-limited specialized services
19 shall be exempt from the requirements of this subdivision if this
20 person is directly supervised by the licensee or a facility
21 employee with a criminal record clearance or exemption, the
22 volunteer spends no more than 16 hours per week at the facility,
23 and the volunteer is not left alone with children in care.

24 (ii) A student enrolled or participating at an accredited
25 educational institution shall be exempt from the requirements of
26 this subdivision if the student is directly supervised by the
27 licensee or a facility employee with a criminal record clearance
28 or exemption, the facility has an agreement with the educational
29 institution concerning the placement of the student, the student
30 spends no more than 16 hours per week at the facility, and the
31 student is not left alone with children in care.

32 (iii) A volunteer who is a relative, legal guardian, or foster
33 parent of a client in the facility shall be exempt from the
34 requirements of this subdivision.

35 (iv) A contracted repair person retained by the facility, if not
36 left alone with children in care, shall be exempt from the
37 requirements of this subdivision.

38 (v) Any person similar to those described in this subdivision,
39 as defined by the department in regulations.

1 (E) If the applicant is a firm, partnership, association, or
2 corporation, the chief executive officer, other person serving in
3 like capacity, or a person designated by the chief executive
4 officer as responsible for the operation of the facility, as
5 designated by the applicant agency.

6 (F) If the applicant is a local educational agency, the president
7 of the governing board, the school district superintendent, or a
8 person designated to administer the operation of the facility, as
9 designated by the local educational agency.

10 (G) Additional officers of the governing body of the applicant,
11 or other persons with a financial interest in the applicant, as
12 determined necessary by the department by regulation. The
13 criteria used in the development of these regulations shall be
14 based on the person's capability to exercise substantial influence
15 over the operation of the facility.

16 (H) This section does not apply to employees of child care and
17 development programs under contract with the State Department
18 of Education who have completed a criminal records clearance as
19 part of an application to the Commission on Teacher
20 Credentialing, and who possess a current credential or permit
21 issued by the commission, including employees of child care and
22 development programs that serve both children subsidized under,
23 and children not subsidized under, a State Department of
24 Education contract. The Commission on Teacher Credentialing
25 shall notify the department upon revocation of a current
26 credential or permit issued to an employee of a child care and
27 development program under contract with the State Department
28 of Education.

29 (I) This section does not apply to employees of a child care
30 and development program operated by a school district, county
31 office of education, or community college district under contract
32 with the State Department of Education who have completed a
33 criminal record clearance as a condition of employment. The
34 school district, county office of education, or community college
35 district upon receiving information that the status of an
36 employee's criminal record clearance has changed shall submit
37 that information to the department.

38 (2) Nothing in this subdivision shall prevent a licensee from
39 requiring a criminal record clearance of any individuals exempt
40 from the requirements under this subdivision.

1 (c) (1) (A) Subsequent to initial licensure, any person
2 specified in subdivision (b) and not exempted from fingerprinting
3 shall, as a condition to employment, residence, or presence in a
4 child day care facility be fingerprinted and sign a declaration
5 under penalty of perjury regarding any prior criminal conviction.
6 The licensee shall submit these fingerprints to the Department of
7 Justice, along with a second set of fingerprints for the purpose of
8 searching the records of the Federal Bureau of Investigation, or
9 to comply with paragraph (1) of subdivision (h), prior to the
10 person's employment, residence, or initial presence in the child
11 day care facility.

12 (B) These fingerprints shall be on a card provided by the State
13 Department of Social Services for the purpose of obtaining a
14 permanent set of fingerprints and submitted to the Department of
15 Justice by the licensee or sent by electronic transmission in a
16 manner approved by the State Department of Social Services. A
17 licensee's failure to submit fingerprints to the Department of
18 Justice, or to comply with paragraph (1) of subdivision (h), as
19 required in this section, shall result in the citation of a deficiency,
20 and an immediate assessment of civil penalties in the amount of
21 one hundred dollars (\$100) per violation, per day for a maximum
22 of five days, unless the violation is a second or subsequent
23 violation within a 12-month period in which case the civil
24 penalties shall be in the amount of one hundred dollars (\$100)
25 per violation for a maximum of 30 days, and shall be grounds for
26 disciplining the licensee pursuant to Section 1596.885 or Section
27 1596.886. The State Department of Social Services may assess
28 civil penalties for continued violations permitted by Sections
29 1596.99 and 1597.62. The fingerprints shall then be submitted to
30 the State Department of Social Services for processing. Within
31 14 calendar days of the receipt of the fingerprints, the
32 Department of Justice shall notify the State Department of Social
33 Services of the criminal record information, as provided in this
34 subdivision. If no criminal record information has been recorded,
35 the Department of Justice shall provide the licensee and the State
36 Department of Social Services with a statement of that fact
37 within 14 calendar days of receipt of the fingerprints. If new
38 fingerprints are required for processing, the Department of
39 Justice shall, within 14 calendar days from the date of receipt of

1 the fingerprints, notify the licensee that the fingerprints were
2 illegible.

3 (C) Documentation of the individual's clearance or exemption
4 shall be maintained by the licensee, and shall be available for
5 inspection. When live-scan technology is operational, as defined
6 in Section 1522.04, the Department of Justice shall notify the
7 department, as required by that section, and notify the licensee by
8 mail within 14 days of electronic transmission of the fingerprints
9 to the Department of Justice, if the person has no criminal record.
10 Any violation of the regulations adopted pursuant to Section
11 1522.04 shall result in the citation of a deficiency and an
12 immediate assessment of civil penalties in the amount of one
13 hundred dollars (\$100) per violation, per day for a maximum of
14 five days, unless the violation is a second or subsequent violation
15 within a 12-month period in which case the civil penalties shall
16 be in the amount of one hundred dollars (\$100) per violation for
17 a maximum of 30 days, and shall be grounds for disciplining the
18 licensee pursuant to Section 1596.885 or Section 1596.886. The
19 department may assess civil penalties for continued violations, as
20 permitted by Sections 1596.99 and 1597.62.

21 (2) Except for persons specified in paragraph (2) of
22 subdivision (b), the licensee shall endeavor to ascertain the
23 previous employment history of persons required to be
24 fingerprinted under this subdivision. If it is determined by the
25 department, on the basis of fingerprints submitted to the
26 Department of Justice, that the person has been convicted of a
27 sex offense against a minor, an offense specified in Section
28 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony,
29 the State Department of Social Services shall notify the licensee
30 to act immediately to terminate the person's employment,
31 remove the person from the child day care facility, or bar the
32 person from entering the child day care facility. The department
33 may subsequently grant an exemption pursuant to subdivision (f).
34 If the conviction was for another crime except a minor traffic
35 violation, the licensee shall, upon notification by the State
36 Department of Social Services, act immediately to either (1)
37 terminate the person's employment, remove the person from the
38 child day care facility, or bar the person from entering the child
39 day care facility; or (2) seek an exemption pursuant to
40 subdivision (f). The department shall determine if the person

1 shall be allowed to remain in the facility until a decision on the
2 exemption is rendered. A licensee's failure to comply with the
3 department's prohibition of employment, contact with clients, or
4 presence in the facility as required by this paragraph shall result
5 in a citation of deficiency and an immediate assessment of civil
6 penalties by the department against the licensee, in the amount of
7 one hundred dollars (\$100) per violation, per day for a maximum
8 of five days, unless the violation is a second or subsequent
9 violation within a 12-month period in which case the civil
10 penalties shall be in the amount of one hundred dollars (\$100)
11 per violation for a maximum of 30 days, and shall be grounds for
12 disciplining the licensee pursuant to Section 1596.885 or
13 1596.886.

14 (3) The department may issue an exemption on its own motion
15 pursuant to subdivision (f) if the person's criminal history
16 indicates that the person is of good character based on the age,
17 seriousness, and frequency of the conviction or convictions. The
18 department, in consultation with interested parties, shall develop
19 regulations to establish the criteria to grant an exemption
20 pursuant to this paragraph.

21 (4) Concurrently with notifying the licensee pursuant to
22 paragraph (3), the department shall notify the affected individual
23 of his or her right to seek an exemption pursuant to subdivision
24 (f). The individual may seek an exemption only if the licensee
25 terminates the person's employment or removes the person from
26 the facility after receiving notice from the department pursuant to
27 paragraph (3).

28 (d) (1) For purposes of this section or any other provision of
29 this chapter, a conviction means a plea or verdict of guilty or a
30 conviction following a plea of nolo contendere. Any action that
31 the department is permitted to take following the establishment
32 of a conviction may be taken when the time for appeal has
33 elapsed, when the judgment of conviction has been affirmed on
34 appeal, or when an order granting probation is made suspending
35 the imposition of sentence, notwithstanding a subsequent order
36 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
37 permitting the person to withdraw his or her plea of guilty and to
38 enter a plea of not guilty, or setting aside the verdict of guilty, or
39 dismissing the accusation, information, or indictment. For
40 purposes of this section or any other provision of this chapter, the

1 record of a conviction, or a copy thereof certified by the clerk of
2 the court or by a judge of the court in which the conviction
3 occurred, shall be conclusive evidence of the conviction. For
4 purposes of this section or any other provision of this chapter, the
5 arrest disposition report certified by the Department of Justice, or
6 documents admissible in a criminal action pursuant to Section
7 969b of the Penal Code, shall be prima facie evidence of
8 conviction, notwithstanding any other provision of law
9 prohibiting the admission of these documents in a civil or
10 administrative action.

11 (2) For purposes of this section or any other provision of this
12 chapter, the department shall consider criminal convictions from
13 another state or federal court as if the criminal offense was
14 committed in this state.

15 (e) The State Department of Social Services may not use a
16 record of arrest to deny, revoke, or terminate any application,
17 license, employment, or residence unless the department
18 investigates the incident and secures evidence, whether or not
19 related to the incident of arrest, that is admissible in an
20 administrative hearing to establish conduct by the person that
21 may pose a risk to the health and safety of any person who is or
22 may become a client. The State Department of Social Services is
23 authorized to obtain any arrest or conviction records or reports
24 from any law enforcement agency as necessary to the
25 performance of its duties to inspect, license, and investigate
26 community care facilities and individuals associated with a
27 community care facility.

28 (f) (1) After review of the record, the director may grant an
29 exemption from disqualification for a license or special permit as
30 specified in paragraphs (1) and (4) of subdivision (a), or for
31 employment, residence, or presence in a child day care facility as
32 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
33 director has substantial and convincing evidence to support a
34 reasonable belief that the applicant and the person convicted of
35 the crime, if other than the applicant, are of good character so as
36 to justify issuance of the license or special permit or granting an
37 exemption for purposes of subdivision (c). However, an
38 exemption may not be granted pursuant to this subdivision if the
39 conviction was for any of the following offenses:

1 (A) An offense specified in Section 220, 243.4, or 264.1,
2 subdivision (a) of Section 273a or, prior to January 1, 1994,
3 paragraph (1) of Section 273a, Section 273d, 288, or 289,
4 subdivision (a) of Section 290, or Section 368 of the Penal Code,
5 or was a conviction of another crime against an individual
6 specified in subdivision (c) of Section 667.5 of the Penal Code.

7 (B) A felony offense specified in Section 729 of the Business
8 and Professions Code or Section 206 or 215, subdivision (a) of
9 Section 347, subdivision (b) of Section 417, or subdivision (a) or
10 (b) of Section 451 of the Penal Code.

11 (2) The department may not prohibit a person from being
12 employed or having contact with clients in a facility on the basis
13 of a denied criminal record exemption request or arrest
14 information unless the department complies with the
15 requirements of Section 1596.8897. ~~Notwithstanding~~
16 ~~subparagraph (B) of paragraph (1) of, and subparagraph (B) of~~
17 ~~paragraph (2) of, subdivision (h) of Section 1596.8897, if a~~
18 ~~request for an exemption has been denied, or an exemption has~~
19 ~~been revoked, the individual shall be prohibited for a period of~~
20 ~~two years from seeking reinstatement or an exemption, unless the~~
21 ~~individual has been convicted of a crime for which no exemption~~
22 ~~can be granted. If a request for an exemption has been denied~~
23 ~~based on conviction for a crime for which no exemption may be~~
24 ~~granted, the individual shall be excluded for the remainder of his~~
25 ~~or her life.~~

26 (g) Upon request of the licensee, who shall enclose a
27 self-addressed stamped postcard for this purpose, the Department
28 of Justice shall verify receipt of the fingerprints.

29 (h) (1) For the purposes of compliance with this section, the
30 department may permit an individual to transfer a current
31 criminal record clearance, as defined in subdivision (a), from one
32 facility to another, as long as the criminal record clearance has
33 been processed through a state licensing district office, and is
34 being transferred to another facility licensed by a state licensing
35 district office. The request shall be in writing to the department,
36 and shall include a copy of the person's driver's license or valid
37 identification card issued by the Department of Motor Vehicles,
38 or a valid photo identification issued by another state or the
39 United States government if the person is not a California
40 resident. Upon request of the licensee, who shall enclose a

1 self-addressed stamped envelope for this purpose, the department
2 shall verify whether the individual has a clearance that can be
3 transferred.

4 (2) The State Department of Social Services shall hold
5 criminal record clearances in its active files for a minimum of
6 two years after an employee is no longer employed at a licensed
7 facility in order for the criminal record clearances to be
8 transferred.

9 (3) The following shall apply to a criminal record clearance or
10 exemption from the department or a county office with
11 department delegated licensing authority:

12 (A) A county office with department delegated licensing
13 authority may accept a clearance or exemption from the
14 department.

15 (B) The department may accept a clearance or exemption from
16 any county office with department delegated licensing authority.

17 (C) A county office with department delegated licensing
18 authority may accept a clearance or exemption from any other
19 county office with department delegated licensing authority.

20 (4) With respect to notifications issued by the Department of
21 Justice pursuant to Section 11105.2 of the Penal Code concerning
22 an individual whose criminal record clearance was originally
23 processed by the department or a county office with department
24 delegated licensing authority, all of the following shall apply:

25 (A) The Department of Justice shall process a request from the
26 department or a county office with department delegated
27 licensing authority to receive the notice, only if all of the
28 following conditions are met:

29 (i) The request shall be submitted to the Department of Justice
30 by the agency to be substituted to receive the notification.

31 (ii) The request shall be for the same applicant type as the type
32 for which the original clearance was obtained.

33 (iii) The request shall contain all prescribed data elements and
34 format protocols pursuant to a written agreement between the
35 department and the Department of Justice.

36 (B) (i) On or before January 7, 2005, the department shall
37 notify the Department of Justice of all county offices that have
38 department delegated licensing authority.

39 (ii) The department shall notify the Department of Justice
40 within 15 calendar days of the date on which a new county office

1 receives department delegated licensing authority or a county's
2 delegated licensing authority is rescinded.

3 (C) The Department of Justice shall charge the department or
4 a county office with department delegated licensing authority a
5 fee for each time a request to substitute the recipient agency is
6 received for purposes of this paragraph. This fee shall not exceed
7 the cost of providing the service.

8 (i) Amendments to this section made in the 1998 calendar year
9 shall be implemented commencing 60 days after the effective
10 date of the act amending this section in the 1998 calendar year,
11 except those provisions for the submission of fingerprints for
12 searching the records of the Federal Bureau of Investigation,
13 which shall be implemented commencing January 1, 1999.

14 ~~SEC. 12:~~

15 *SEC. 10.* Section 1728.1 of the Health and Safety Code is
16 amended to read:

17 1728.1. (a) To qualify for a home health agency license, the
18 following requirements shall be met:

19 (1) Every applicant shall satisfy the following conditions:

20 (A) Be of good moral character. If the applicant is a firm,
21 association, organization, partnership, business trust, corporation,
22 or company, all principal managing members thereof, and the
23 person in charge of the agency for which application for license
24 is made, shall satisfy this requirement. If the applicant is a
25 political subdivision of the state or other governmental agency,
26 the person in charge of the agency for which application for
27 license is made, shall satisfy this requirement.

28 (B) Possess and demonstrate the ability to comply with this
29 chapter and the rules and regulations adopted under this chapter
30 by the state department.

31 (C) File his or her application pursuant to and in full
32 compliance with this chapter.

33 (2) (A) The following persons shall submit to the State
34 Department of Health Services an application and shall submit
35 electronic fingerprint images to the Department of Justice for the
36 furnishing of the person's criminal record to the state department,
37 at the person's expense as provided in subdivision (b), for the
38 purpose of a criminal record review:

39 (i) The owner or owners of a private agency if the owners are
40 individuals.

1 (ii) If the owner of a private agency is a corporation,
2 partnership, or association, any person having a 10 percent or
3 greater interest in that corporation, partnership, or association.

4 (iii) The administrator of a home health agency.

5 (B) A criminal record clearance shall be complete when the
6 department has obtained the person's criminal record information
7 from the Department of Justice and has determined that the
8 person is not disqualified from engaging in the activity for which
9 clearance is required. If any of these persons provide services to
10 patients, the criminal record clearance shall be completed prior to
11 patient contact.

12 (b) The persons specified in paragraph (2) of subdivision (a)
13 shall be responsible for any costs associated with transmitting the
14 electronic fingerprint images. The fee to cover the processing
15 costs of the Department of Justice, not including the costs
16 associated with rolling the fingerprint cards, shall not exceed
17 thirty-two dollars (\$32) per card.

18 (c) If the criminal record review conducted pursuant to
19 paragraph (2) of subdivision (a) discloses a conviction for a
20 felony or any crime that evidences an unfitness to provide home
21 health services, the application for a license shall be denied or the
22 person shall be prohibited from providing service in the home
23 health agency applying for a license. This subdivision shall not
24 apply to deny a license or prohibit the provision of service if the
25 person presents evidence satisfactory to the state department that
26 the person has been rehabilitated and presently is of such good
27 character as to justify the issuance of the license or the provision
28 of service in the home health agency.

29 ~~(d) A person subject to a criminal clearance under this section~~
30 ~~that has been disqualified from engaging in the activity for which~~
31 ~~clearance is required shall not reapply for criminal clearance~~
32 ~~licensure until two years after notification of denial of the~~
33 ~~criminal clearance.~~

34 ~~SEC. 13. Section 1736.1 of the Health and Safety Code is~~
35 ~~amended to read:~~

36 ~~1736.1. (a) An applicant for certification as a certified home~~
37 ~~health aide shall comply with each of the following requirements:~~

38 ~~(1) Have successfully completed a training program approved~~
39 ~~by the department pursuant to applicable federal and state~~
40 ~~regulations.~~

1 ~~(2) Obtain a criminal record clearance pursuant to Section~~
2 ~~1736.6.~~

3 ~~(3) Shall not have had an application for certification denied or~~
4 ~~a certificate revoked pursuant to Section 1736.5 or 1337.9 in the~~
5 ~~past two years.~~

6 ~~(4) Shall not have had a criminal record clearance denied~~
7 ~~within the preceding two years.~~

8 ~~(b) If the department determines that the person had~~
9 ~~previously applied for a certificate under this article, and the~~
10 ~~application was denied pursuant to Section 1736.5 or 1337.9~~
11 ~~within the last two years, the department shall reject the~~
12 ~~application and exclude the person from any facility licensed by~~
13 ~~the department as follows:~~

14 ~~(1) In cases where the applicant petitioned for a hearing, the~~
15 ~~department shall reject the application until two years have~~
16 ~~elapsed from the effective date of the decision and order of the~~
17 ~~department upholding the denial.~~

18 ~~(2) In cases where the applicant did not petition for a hearing,~~
19 ~~the department shall reject the application until two years have~~
20 ~~elapsed from the date of the notification of the denial.~~

21 ~~(3) In cases where an immediate action was taken pursuant to~~
22 ~~subdivision (h) of Section 1736.5 or subdivision (i) of Section~~
23 ~~1337.9 and the applicant petitioned for a hearing, the department~~
24 ~~shall reject the application until two years have elapsed from the~~
25 ~~date of the notification of the revocation.~~

26 ~~(c) Any person who violates this article is guilty of a~~
27 ~~misdemeanor and, upon a conviction thereof, shall be punished~~
28 ~~by imprisonment in the county jail for not more than 180 days, or~~
29 ~~by a fine of not less than twenty dollars (\$20) nor more than one~~
30 ~~thousand dollars (\$1,000), or by both fine and imprisonment.~~

31 ~~SEC. 14. Section 1736.2 of the Health and Safety Code is~~
32 ~~amended to read:~~

33 ~~1736.2. (a) Certificates issued for certified home health aides~~
34 ~~shall be renewed every two years and renewal shall be~~
35 ~~conditioned on the certificate holder obtaining a criminal record~~
36 ~~clearance pursuant to Section 1736.6.~~

37 ~~(b) Certificates issued to certified home health aides shall~~
38 ~~expire on the certificate holder's birthday. If the certificate is~~
39 ~~renewed more than 30 days after its expiration, the certificate~~

holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this article.

(e) To renew an unexpired certificate, the certificate holder shall, on or before the certificate expiration date, apply for renewal on a form provided by the state department and pay the renewal fee prescribed in Section 1736.3.

(d) The state department shall give written notice to a certificate holder 90 days in advance of the renewal date and 90 days in advance of the expiration of the fourth year that a renewal fee has not been paid, and shall give written notice informing the certificate holder in general terms of the provisions governing certificate renewal for certified home health aides. Nonreceipt of the renewal notice does not relieve the certificate holder of the obligation to make a timely renewal. Failure to make a timely renewal shall result in expiration of the certificate.

(e) Except as otherwise provided in this article, an expired certificate may be renewed at any time within four years after its expiration on the filing of an application for renewal on a form prescribed by the state department, and payment of the renewal fee in effect on the date the application is filed.

Renewal under this article shall be effective on the date on which the application is filed, on the date when the renewal fee is paid, or on the date on which the delinquency fee is paid, whichever occurs last. If renewed, the certificate shall continue in effect until the date provided for in this section, when it shall expire if it is not again renewed.

(f) If a certified home health aide applies for renewal more than 30 days after expiration but within four years after the expiration, and demonstrates in writing to the state department's satisfaction why the renewal application was late, then the state department shall issue a renewal, upon payment of the renewal fee. If the certified home health aide demonstrates in writing to the state department's satisfaction why he or she cannot pay the delinquency fee, then the state department on a case-by-case basis shall consider waiving the delinquency fee. A suspended certificate is subject to expiration and shall be renewed as provided in this article, but this renewal does not entitle the certificate holder, while the certificate remains suspended, and until it is reinstated, to engage in the certified activity, or in any

1 other activity or conduct in violation of the order or judgment by
2 which the certificate was suspended.

3 ~~(g) A revoked certificate is subject to expiration as provided in~~
4 ~~this section, but it cannot be renewed. If reinstatement of the~~
5 ~~certificate is approved by the state department, the certificate~~
6 ~~holder, as a condition precedent to reinstatement, shall pay a~~
7 ~~reinstatement fee in an amount equal to the renewal fee in effect~~
8 ~~on the date the application for reinstatement is filed, plus the~~
9 ~~delinquency fee, if any, accrued at the time of its revocation. If~~
10 ~~the prior certificate was revoked within the preceding two years,~~
11 ~~the prior certificate holder may not file an initial application until~~
12 ~~two years have elapsed from the date of the revocation pursuant~~
13 ~~to subdivision (b) of Section 1736.1.~~

14 ~~(h) A certificate that is not renewed within four years after its~~
15 ~~expiration cannot be renewed, restored, reissued, or reinstated~~
16 ~~except upon completion of a certification training program unless~~
17 ~~deemed otherwise by the state department if all of the following~~
18 ~~conditions are met:~~

19 ~~(1) No fact, circumstance, or condition exists that, if the~~
20 ~~certificate were issued, would justify its revocation or~~
21 ~~suspension.~~

22 ~~(2) The person pays the application fee provided for by~~
23 ~~subdivision (a) of Section 1736.3.~~

24 ~~(3) The person takes and passes any examination that may be~~
25 ~~required of an applicant for a new certificate at that time, that~~
26 ~~shall be given by an approved provider of a certification training~~
27 ~~program.~~

28 ~~(i) Certificate holders shall notify the state department within~~
29 ~~60 days of any change of address. Any notice sent by the~~
30 ~~department shall be effective if mailed to the current address~~
31 ~~filed with the department.~~

32 ~~(j) Certificate holders that have been certified as both nurse~~
33 ~~assistants pursuant to Article 9 (commencing with Section 1337)~~
34 ~~of Chapter 2 of Division 2 and home health aides pursuant to this~~
35 ~~chapter shall renew their certificates at the same time on one~~
36 ~~application.~~

37 ~~SEC. 15.~~

38 *SEC. 11.* Section 1736.6 of the Health and Safety Code is
39 amended to read:

1 1736.6. (a) A criminal record clearance shall be conducted
2 for all home health aides by the electronic submission of
3 fingerprint cards to the department for processing at the
4 Department of Justice. This criminal record clearance shall be
5 completed prior to issuing or renewing a certificate, and prior to
6 direct contact with residents. A criminal record shall be
7 completed when the department has obtained the person's
8 criminal record information from the Department of Justice and
9 has determined that the person is not disqualified from engaging
10 in the activity for which clearance is required. Applicants shall be
11 responsible for any costs associated with transmitting the
12 fingerprint images. The fee to cover the processing costs of the
13 Department of Justice, not including the costs associated with
14 transmitting the fingerprint images, shall not exceed thirty-two
15 dollars (\$32) per submission.

16 (b) Upon enrollment in a training program for home health
17 aide certification, and prior to direct contact with residents, a
18 candidate for training shall submit a training and examination
19 application to the department and submit electronic fingerprint
20 images to receive a criminal record review through the
21 Department of Justice. This criminal record clearance shall be
22 completed prior to direct contact with residents. Submission of
23 the fingerprints to the Federal Bureau of Investigation shall be at
24 the discretion of the state department.

25 (c) New home health aide applicants who are unemployed and
26 unable to pay the fee charged by the Department of Justice
27 pursuant to paragraph (1) of subdivision (a) due to financial
28 hardship may request a waiver for a period not to exceed six
29 months. The request for waiver shall be made in writing at the
30 time the fingerprint card is submitted for processing. The
31 applicant shall agree to pay the fee within six months of
32 employment. The failure to pay the fee within the six-month
33 period shall result in the inactivation of the applicant's certificate
34 until the fee is paid in full.

35 (d) Upon receipt of the fingerprints, the Department of Justice
36 shall notify the state department of the criminal record
37 information, as provided for in this subdivision. If no criminal
38 record information has been recorded, the Department of Justice
39 shall provide the state department with a statement of that fact. If
40 the fingerprints are illegible, the Department of Justice shall,

1 within 15 calendar days from receipt of the fingerprints, notify
2 the state department of that fact.

3 (e) The department shall respond to the applicant and
4 employer within 30 days from the date of receipt of the
5 fingerprint cards.

6 (f) A criminal record clearance, consistent with this section
7 shall be implemented for home health aide applicants beginning
8 July 1, 1998, and phased in for all certified home health aides by
9 June 30, 2000.

10 (g) The department shall develop procedures to ensure that
11 any licensee, direct care staff, or certificate holder for whom a
12 criminal record has been obtained pursuant to this section or
13 Section 1265.6 or 1338.5 shall not be required to obtain multiple
14 criminal record clearances.

15 ~~SEC. 16.~~

16 *SEC. 12.* Section 1743.9 of the Health and Safety Code is
17 amended to read:

18 1743.9. (a) To qualify for a private duty nursing agency
19 license, the following requirements shall be met:

20 (1) Every applicant shall satisfy the following conditions:

21 (A) Be of good moral character. If the applicant is a firm,
22 association, organization, partnership, business trust, corporation,
23 or company, all principal managing members thereof, and the
24 person in charge of the agency for which application for a license
25 is made, shall satisfy this requirement. If the applicant is a
26 political subdivision of the state or other governmental agency,
27 the person in charge of the agency for which application for a
28 license is made shall satisfy this requirement.

29 (B) Possess and demonstrate the ability to comply with this
30 chapter and the rules and regulations adopted under this chapter
31 by the department.

32 (C) File his or her application pursuant to and in full
33 compliance with this chapter.

34 (2) (A) The following persons shall submit to the department
35 an application, and shall submit fingerprint images to the
36 Department of Justice, for the furnishing of the person's criminal
37 record to the department, at the person's expense as provided in
38 subdivision (b), for the purpose of a criminal record review:

39 (i) The owner or owners of a private agency if the owners are
40 individuals.

1 (ii) If the owner of a private agency is a corporation,
2 partnership, or association, any person having a 10 percent or
3 greater interest in that corporation, partnership, or association.

4 (iii) The administrator of a private duty nursing agency.

5 (3) A criminal record clearance shall be complete when the
6 department has obtained from the Department of Justice the
7 person's criminal record and has determined that the person is
8 not disqualified from engaging in the activity for which clearance
9 is required.

10 (b) The persons specified in paragraph (2) of subdivision (a)
11 shall be responsible for any costs associated with transmitting the
12 fingerprint images. The fee to cover the processing costs of the
13 Department of Justice, not including the costs associated with
14 transmitting the electronic fingerprint images, shall not exceed
15 thirty-two dollars (\$32) per submission.

16 (c) If the criminal record review conducted pursuant to
17 paragraph (2) of subdivision (a) discloses a conviction for a
18 felony or any crime that evidences an unfitness to provide private
19 duty nursing services, the application for a license shall be
20 denied, or the person shall be prohibited from providing service
21 in the private duty nursing agency applying for a license. This
22 subdivision shall not apply to deny a license or prohibit the
23 provision of service if the person presents evidence satisfactory
24 to the department that the person has been rehabilitated and
25 presently is of that good character that justifies the issuance of
26 the license or the provision of service in the private duty nursing
27 agency.

28 ~~(d) The applicant shall not have had an application for~~
29 ~~licensure or renewal denied or revoked pursuant to Section~~
30 ~~1743.25 in the preceding two years, nor had a criminal clearance~~
31 ~~denied by the department within the preceding two years.~~

32 ~~SEC. 17.~~

33 *SEC. 13.* Section 1797.191 of the Health and Safety Code is
34 amended to read:

35 1797.191. (a) The authority shall establish minimum
36 standards for the training in pediatric first aid, pediatric
37 cardiopulmonary resuscitation (CPR), and preventive health
38 practices required by Section 1596.866.

39 (b) (1) The authority shall establish a process for the ongoing
40 review and approval of training programs in pediatric first aid,

pediatric CPR, and preventive health practices as specified in paragraph (2) of subdivision (a) of Section 1596.866 to ensure that those programs meet the minimum standards established pursuant to subdivision (a). The authority shall charge fees equal to its costs incurred for the pediatric first aid and pediatric CPR training standards program and for the ongoing review and approval of these programs. The initial approval of training programs in pediatric first aid, pediatric CPR, and preventative health practices shall be placed on probation for the first six months of the initial two-year approval cycle, during which time the training program shall not possess a vested right or property interest in the training program approval. Upon receipt of credible evidence of a violation of subdivision (f), the authority may rescind the probationary approval by providing written notice to the program director of the training program at his or her last known address on file with the authority. A training program whose probationary approval has been rescinded shall have all the due process rights associated with the denial of an initial training program approval.

(2) The authority shall establish, in consultation with experts in pediatric first aid, pediatric CPR, and preventive health practices, a process to ensure the quality of the training programs, including, but not limited to, a method for assessing the appropriateness of the courses and the qualifications of the instructors.

(c) (1) The authority may charge a fee equal to its costs incurred for the preventive health practices program and for the initial review and approval and renewal of approval of the program.

(2) If the authority chooses to establish a fee process based on the use of course completion cards for the preventive health practices program, the cost shall not exceed seven dollars (\$7) per card for each training participant until January 1, 2001, at which time the authority may evaluate its administrative costs. After evaluation of the costs, the authority may establish a new fee scale for the cards so that revenue does not exceed the costs of the ongoing review and approval of the preventive health practices training.

(d) For the purposes of this section, "training programs" means programs that apply for approval by the authority to

1 provide the training in pediatric first aid, pediatric CPR, or
2 preventive health practices as specified in paragraph (2) of
3 subdivision (a) of Section 1596.866. Training programs include
4 all affiliated programs that also provide any of the
5 authority-approved training required by this division. “Affiliated
6 programs” means programs that are overseen by persons or
7 organizations that have an authority-approved training program
8 in pediatric first aid, pediatric CPR, or preventive health
9 practices. Affiliated programs also include programs that have
10 purchased an authority-approved training program in pediatric
11 first aid, pediatric CPR, or preventive health practices. Training
12 programs and their affiliated programs shall comply with this
13 division and with the regulations adopted by the authority
14 pertaining to training programs in pediatric first aid, pediatric
15 CPR, or preventive health practices.

16 (e) The director of the authority may, in accordance with
17 regulations adopted by the authority, deny, suspend, or revoke
18 any approval issued under this division or may place any
19 approved program on probation, upon the finding by the director
20 of the authority of an imminent threat to the public health and
21 safety as evidenced by the occurrence of any of the actions listed
22 in subdivision (f).

23 (f) Any of the following actions shall be considered evidence
24 of a threat to the public health and safety, and may result in the
25 denial, suspension, probation, or revocation of a program’s
26 approval or application for approval pursuant to this division.

27 (1) Fraud.

28 (2) Incompetence.

29 (3) The commission of any fraudulent, dishonest, or corrupt
30 act that is substantially related to the qualifications, functions,
31 and duties of training program directors and instructors.

32 (4) Conviction of any crime that is substantially related to the
33 qualifications, functions, and duties of training program directors
34 and instructors. The record of conviction or a certified copy of
35 the record shall be conclusive evidence of the conviction.

36 (5) Violating or attempting to violate, directly or indirectly, or
37 assisting in or abetting the violation of, or conspiring to violate,
38 this division or the regulations promulgated by the authority
39 pertaining to the review and approval of training programs in
40 pediatric first aid, pediatric CPR, and preventive health practices

1 as specified in paragraph (2) of subdivision (a) of Section
2 1596.866.

3 ~~(g) (1) If the authority determines that a person had~~
4 ~~previously applied for or held a pediatric first aid, pediatric CPR,~~
5 ~~or preventative health and safety training program under this~~
6 ~~division, and the application was denied, or the training program~~
7 ~~approval was revoked pursuant to subdivision (f), the authority~~
8 ~~shall reject the application or petition for reinstatement in~~
9 ~~accordance with the following:~~

10 ~~(A) If the applicant or training program director requested a~~
11 ~~hearing, the authority shall reject the application or petition for~~
12 ~~reinstatement until two years has elapsed from the effective date~~
13 ~~of the decision and order of the authority upholding the denial or~~
14 ~~revocation:~~

15 ~~(B) If the applicant or training program director did not~~
16 ~~request a hearing, the authority shall reject the application or~~
17 ~~petition for reinstatement until two years has elapsed from the~~
18 ~~date that notification of the denial or revocation was mailed to~~
19 ~~the applicant or training program director.~~

20 ~~(2) An exception to the two-year waiting period provided for~~
21 ~~in paragraph (1) shall apply under either of the following~~
22 ~~circumstances:~~

23 ~~(A) If the applicant or training program director was banned~~
24 ~~from training program approval pursuant to subdivision (f), and~~
25 ~~the two-year waiting period would extend beyond the banned~~
26 ~~period, the application or petition for reinstatement shall be~~
27 ~~adopted once the banned period expires.~~

28 ~~(B) If the applicant or training program director was banned~~
29 ~~from training program approval pursuant to subdivision (f), and~~
30 ~~the two-year waiting period does not extend beyond the banned~~
31 ~~period, the authority shall reject the application or petition for~~
32 ~~reinstatement until the banned period expires.~~

33 ~~(h)~~

34 (g) In order to ensure that adequate qualified training
35 programs are available to provide training in the preventive
36 health practices course to all persons who are required to have
37 that training, the authority may, after approval of the
38 Commission on Emergency Medical Services pursuant to Section
39 1799.50, establish temporary standards for training programs for
40 use until permanent standards are adopted pursuant to Chapter

1 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
2 Title 2 of the Government Code.

3 (i)

4 (h) Persons who, prior to the date on which the amendments to
5 this section enacted in 1998 become operative, have completed a
6 course or courses in preventive health practices as specified in
7 subparagraph (C) of paragraph (2) of subdivision (a) of Section
8 1596.866, and have a certificate of completion card for a course
9 or courses in preventive health practices, or certified copies of
10 transcripts that identify the number of hours and the specific
11 course or courses taken for training in preventive health practices
12 shall be deemed to have met the requirement for training in
13 preventive health practices.

14 ~~SEC. 18.~~

15 *SEC. 14.* Section 5405 of the Welfare and Institutions Code is
16 amended to read:

17 5405. (a) This section shall apply to each facility licensed by
18 the State Department of Mental Health, or its delegated agent, on
19 or after January 1, 2003. For purposes of this section, "facility"
20 includes psychiatric health facilities, as defined in Section 1250.2
21 of the Health and Safety Code, licensed pursuant to Chapter 9
22 (commencing with Section 77001) of Division 5 of Title 22 of
23 the California Code of Regulations and mental health
24 rehabilitation centers licensed pursuant to Chapter 3.5
25 (commencing with Section 781.00) of Division 1 of Title 9 of the
26 California Code of Regulations.

27 (b) (1) (A) Prior to the initial licensure or first renewal of a
28 license on or after January 1, 2003, of any person to operate or
29 manage a facility specified in subdivision (a), the department
30 shall submit fingerprint images and related information
31 pertaining to the applicant or licensee to the Department of
32 Justice for purposes of a criminal record check, as specified in
33 paragraph (2), at the expense of the applicant or licensee. The
34 Department of Justice shall provide the results of the criminal
35 record check to the department. The department may take into
36 consideration information obtained from or provided by other
37 government agencies. The department shall determine whether
38 the applicant or licensee has ever been convicted of a crime
39 specified in subdivision (c). The department shall submit
40 fingerprint images and related information each time the position

1 of administrator, manager, program director, or fiscal officer of a
2 facility is filled and prior to actual employment for initial
3 licensure or an individual who is initially hired on or after
4 January 1, 2003. For purposes of this subdivision, “applicant”
5 and “licensee” include the administrator, manager, program
6 director, or fiscal officer of a facility.

7 (B) Commencing January 1, 2003, upon the employment of, or
8 contract with or for, any direct care staff the department shall
9 submit fingerprint images and related information pertaining to
10 the direct care staff person to the Department of Justice for
11 purposes of a criminal record check, as specified in paragraph
12 (2), at the expense of the direct care staff person or licensee. The
13 Department of Justice shall provide the results of the criminal
14 record check to the department. The department shall determine
15 whether the direct care staff person has ever been convicted of a
16 crime specified in subdivision (c). The department shall notify
17 the licensee of these results. No direct client contact by the
18 trainee or newly hired staff, or by any direct care contractor shall
19 occur prior to clearance by the department unless the trainee,
20 newly hired employee, contractor, or employee of the contractor
21 is constantly supervised.

22 (C) Commencing January 1, 2003, any contract for services
23 provided directly to patients or residents shall contain provisions
24 to ensure that the direct services contractor submits to the
25 department fingerprint images and related information pertaining
26 to the direct services contractor for submission to the Department
27 of Justice for purposes of a criminal record check, as specified in
28 paragraph (2), at the expense of the direct services contractor or
29 licensee. The Department of Justice shall provide the results of
30 the criminal record check to the department. The department
31 shall determine whether the direct services contractor has ever
32 been convicted of a crime specified in subdivision (c). The
33 department shall notify the licensee of these results.

34 ~~(2) The applicant, licensee, direct care staff person, or direct~~
35 ~~services contractor specified in paragraph (1) shall submit to the~~
36 ~~department a statement signed under penalty of perjury that~~
37 ~~discloses any prior criminal convictions and prior~~
38 ~~government-imposed disciplinary actions specified in subdivision~~
39 ~~(a), or that states that he or she has no prior convictions or~~
40 ~~government disciplinary actions. If the applicant, licensee, direct~~

1 care staff person, or direct services contractor specified in
2 paragraph (1) has resided in California for at least the previous
3 seven years, the department shall only require the submission of
4 one set of fingerprint images and related information. The
5 Department of Justice shall charge a fee sufficient to cover the
6 reasonable cost of processing the fingerprint submission.
7 Fingerprints submitted pursuant to this subdivision include
8 fingerprints taken by the use of live scan technology. When
9 requested, the Department of Justice shall forward one set of
10 fingerprint images to the Federal Bureau of Investigation for the
11 purpose of obtaining any record of previous convictions or
12 arrests pending adjudication of the applicant, licensee, direct care
13 staff person, or direct services contractor. The results of a
14 criminal record check provided by the Department of Justice
15 shall contain every conviction rendered against an applicant,
16 licensee, direct care staff person, or direct services contractor,
17 and every offense for which the applicant, licensee, direct care
18 staff person, or direct services contractor is presently awaiting
19 trial, whether the person is incarcerated or has been released on
20 bail or on his or her own recognizance pending trial. The
21 department shall request subsequent arrest notification from the
22 Department of Justice pursuant to Section 11105.2 of the Penal
23 Code.

24 (c) (1) The department shall deny any application for any
25 license, suspend or revoke any existing license, and disapprove
26 or revoke any employment or contract for direct services, if the
27 applicant, licensee, employee, or direct services contractor has
28 been convicted of, or incarcerated for, a felony defined in
29 subdivision (c) of Section 667.5 of, or subdivision (c) of Section
30 1192.7 of, the Penal Code, within the preceding 10 years.

31 (2) The application for licensure or renewal of any license
32 shall be denied, and any employment or contract to provide direct
33 services shall be disapproved or revoked, if the criminal record of
34 the person includes a conviction in another jurisdiction for an
35 offense that, if committed or attempted in this state, would have
36 been punishable as one or more of the offenses referred to in
37 paragraph (1).

38 ~~(3) (A) The department shall deny any application for any~~
39 ~~license, and suspend or revoke any existing license, and~~
40 ~~disapprove or revoke any employment or contract for direct~~

1 services, if the applicant, licensee, employee, or direct services
2 contractor has been convicted of, or incarcerated for, any crime
3 listed in subparagraph (B) within the preceding 10 years or any
4 crime listed in subparagraph (C) within the preceding five years.

5 (B) Any violation of Section 246, subdivision (a) or (g) of
6 Section 273, subdivision (b) of Section 417, subdivision (a) or
7 (b) of Section 451, Section 459, subdivision (a) of Section 460,
8 Section 503, or Section 518 of the Penal Code, while
9 participating in a criminal street gang, as defined in subdivision
10 (f) of Section 186.22 of the Penal Code.

11 (C) Any violation of Section 71, 76, 192, 242, 273.5, 273.6,
12 422, 470, 475, 484, 487, 488, or 496 of the Penal Code, any
13 violation of Section 597 or 647d of the Penal Code resulting in a
14 felony conviction, and any conviction in which an enhancement
15 for the use of a firearm is imposed under Section 12022.53 of the
16 Penal Code.

17 (4) Any individual denied employment pursuant to this section
18 shall be ineligible to reapply for employment for a minimum of
19 two years from the date of denial or at the expiration of the
20 specified five- or 10-year period, whichever is applicable as
21 determined by the department.

22 (d) (1) The department may approve an application for, or
23 renewal of, a license, or continue any employment or contract for
24 direct services, if the person has been convicted of a
25 misdemeanor offense that is not a crime upon the person of
26 another, the nature of which has no bearing upon the duties for
27 which the person will perform as a licensee, direct care staff
28 person, or direct services contractor. In determining whether to
29 approve the application, employment, or contract for direct
30 services, the department shall take into consideration the factors
31 enumerated in paragraph (2).

32 (2) Notwithstanding subdivision (c), if the criminal record of a
33 person indicates any conviction other than a minor traffic
34 violation, the department may deny the application for license or
35 renewal, and may disapprove or revoke any employment or
36 contract for direct services. In determining whether or not to
37 deny the application for licensure or renewal, or to disapprove or
38 revoke any employment or contract for direct services, the
39 department shall take into consideration the following factors:

1 (A) The nature and seriousness of the offense under
2 consideration and its relationship to the person's employment,
3 duties, and responsibilities.

4 (B) Activities since conviction, including employment or
5 participation in therapy or education, that would indicate changed
6 behavior.

7 (C) The time that has elapsed since the commission of the
8 conduct or offense and the number of offenses.

9 (D) The extent to which the person has complied with any
10 terms of parole, probation, restitution, or any other sanction
11 lawfully imposed against the person.

12 (E) Any rehabilitation evidence, including character
13 references, submitted by the person.

14 (F) Employment history and current employer
15 recommendations.

16 (G) Circumstances surrounding the commission of the offense
17 that would demonstrate the unlikelihood of repetition.

18 (H) The granting by the Governor of a full and unconditional
19 pardon.

20 (I) A certificate of rehabilitation from a superior court.

21 (e) Denial, suspension, or revocation of a license, or
22 disapproval or revocation of any employment or contract for
23 direct services specified in subdivision (c) and paragraph (2) of
24 subdivision (d) are not subject to appeal, except as provided in
25 subdivision (f).

26 (f) After a review of the record, the director may grant an
27 exemption from denial, suspension, or revocation of any license,
28 or disapproval of any employment or contract for direct services,
29 if the crime for which the person was convicted was a property
30 crime that did not involve injury to any person and the director
31 has substantial and convincing evidence to support a reasonable
32 belief that the person is of such good character as to justify
33 issuance or renewal of the license or approval of the employment
34 or contract.

35 (g) A plea or verdict of guilty, or a conviction following a plea
36 of nolo contendere shall be deemed a conviction within the
37 meaning of this section. The department may deny any
38 application, or deny, suspend, or revoke a license, or disapprove
39 or revoke any employment or contract for direct services based
40 on a conviction specified in subdivision (c) when the judgment of

1 conviction is entered or when an order granting probation is
2 made suspending the imposition of sentence.

3 (h) (1) For purposes of this section, “direct care staff” means
4 any person who is an employee, contractor, or volunteer who has
5 contact with other patients or residents in the provision of
6 services. Administrative and licensed personnel shall be
7 considered direct care staff when directly providing program
8 services to participants.

9 (2) An additional background check shall not be required
10 pursuant to this section if the direct care staff or licensee has
11 received a prior criminal history background check while
12 working in a mental health rehabilitation center or psychiatric
13 health facility licensed by the department, and provided the
14 department has maintained continuous subsequent arrest
15 notification on the individual from the Department of Justice
16 since the prior criminal background check was initiated.

17 (3) When an application is denied on the basis of a conviction
18 pursuant to this section, the department shall provide the
19 individual whose application was denied with notice, in writing,
20 of the specific grounds for the proposed denial.

21 (4) State departments and agencies may share information
22 regarding final administrative actions taken by individual
23 departments and criminal record information that is not otherwise
24 prohibited from disclosure by the Department of Justice for
25 applicants, pursuant to this section.

26 (5) State departments and agencies may take action with
27 respect to applicants and licensees based on information obtained
28 from other state departments and agencies if the information
29 indicates that the conduct of the applicant or licensee has been
30 inimical to the clients or the public.

31 ~~SEC. 19.~~

32 *SEC. 15.* No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the
37 penalty for a crime or infraction, within the meaning of Section
38 17556 of the Government Code, or changes the definition of a

- 1 crime within the meaning of Section 6 of Article XIII B of the
- 2 California Constitution.

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